

**OPEN MEETING MINUTES**  
**Missouri State Board of Embalmers**  
**and Funeral Directors**

**August 19, 2009**  
**Division of Professional Registration**  
**3605 Missouri Boulevard**  
**Jefferson City, Missouri**

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**Wednesday, August 19, 2009 - 7:30a.m. to 7:31 a.m.**

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The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by Martin Vernon, Chairman, at 7:30 a.m. on Wednesday, August 19, 2009, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

**Roll Call**

**Board Members Present**

Martin Vernon, Chairman  
Gary Fraker, Vice-Chairman  
Todd Mahn, Secretary  
James Reinhard, Member

**Board Members Absent**

Joy Gerstein, Public Member  
John McCulloch, Member

**Staff Present**

Becky Dunn, Executive Director  
Lori Hayes, Inspector  
Earl Kraus, Senior Legal Counsel  
Sharon Euler, Assistant Attorney General

**Closed Meeting**

Motion was made by Gary Fraker and seconded by Todd Mahn to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a

disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

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**Wednesday, August 19, 2009 9:15 a.m.**

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The meeting of the Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:15 a.m. on Wednesday, August 19, 2009. The meeting was called to order by Martin Vernon, Chairman, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

**Roll Call**

**Board Members Present**

Martin Vernon, Chairman

Gary Fraker, Vice-Chairman

James Reinhard, Member

Todd Mahn, Secretary

Joy Gerstein, Public Member (Was on conference call and left the call at 9:45 a.m.)

**Board Members Absent**

John McCulloch, Member

**Staff Present**

Becky Dunn, Executive Director

Lori Hayes, Inspector

Earl Kraus, Senior Legal Counsel

Sharon Euler, Assistant Attorney General

**Public Present**

Barb Neumann, Representative Timothy Meadows

Kalene Summerville, MFDEA/Summerville Funeral Home

Darlene Russell, CFL Preneed

Brad Speaks, Self/Speaks Family Legacy Chapels

Mark Warren, Inglish & Monaco

Richard Brownlee, Assurant

Chris Moody, SCI

Bill Stalter, Stalter Legal Services

Don Otto, MFDEA/MFT

Doug Farrow, Stewart Enterprises

**Approval of Agenda**

Motion was made by Gary Fraker and seconded James Reinhard by to approve the open agenda. Motion carried with Gary Fraker, Todd Mahn, James Reinhard and Joy Gerstein

voting in favor with no votes in opposition. John McCulloch was absent from the meeting in its entirety.

**Approval of Minutes**

No minutes were available for approval.

**Executive Director's Report**

Becky Dunn had nothing to report at this meeting.

**Future Meeting Dates**

Future meeting dates are scheduled as follows:

- August 25, 2009, 9:00 a.m.
- August 26, 2009, 9:00 a.m. if needed
- September 2, 2009, 9:00 a.m.

**Financials/Projections**

Nothing was reported at this meeting.

**Attorney General Update**

Sharon Euler, Assistant Attorney General, stated she contacted Mark Gutchen, Counsel with the Division of Legal Services in regards to the Medicaid provision discussed last week for individuals qualifying for assistance, he was going to speak with his group and will get back in touch with Ms. Euler next week.

**Senate Bill 1 Implementation Process**

The Board reviewed the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

It was the decision of the Board to draft rules for the following sections for clarity for review at a subsequent meeting:

- 436.455 Purchaser cancellation
- 436.456 Seller cancellation
- 436.457 Purchaser change of provider
- 436.458 Seller annual reports
- 436.465 Record retention
- 436.470 Complaints/Inspections/Subpoenas/AG
- 436.480 Purchaser's death/incapacity
- 436.485 Criminal penalties/Ch. 407 violation
- 436.490 Provider cease business
- 436.500 Seller cease business
- 436.505 Credit life
- 436.510 Provider may demand payment from trustee
- 436.520 Rulemaking authority
- Section 1 Closed records

436.506 Credit life

The board voted if a contract is cancelled then all interest goes back to consumer. Jim Reinhard and Gary Fraker voted no and Todd Mahn voted yes. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

The board voted a refund less the origination fee would be returned on a cancelled contract. Gary Fraker and Todd Mahn voted yes, Jim Reinhard voted no. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

The board voted for further clarification on 436.457.4 regarding the amount that is returned to the consumer. Todd Mahn, Jim Reinhard and Gary Fraker voted in favor. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

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**12:10 p.m. – 1:30 p.m. – Closed Meeting**

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Motion was made by Gary Fraker and seconded by Jim Reinhard to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Martin Vernon, Gary Fraker, John McCulloch and Jim Reinhard voting in favor with no votes in opposition. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

**Reconvene**

The State Board of Embalmers and Funeral Directors reconvened in open session at approximately 1:30 p.m.

**Senate Bill 1 Implementation Process - Continued**

The Board continued its review of the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.



**Notice of Intent**

The board reviewed the draft of the Notice of Intent. A motion was made by Gary Fraker and seconded by Todd Mahn to approve the Notice of Intent as drafted with the changes of adding the boards email address to the top of the form and add the fax number. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety. There is a finding of confident and substantial evidence to support the need for this rule.

It was the directive of the board to appoint a sub committee to approve the Applications for Preneed Provider/Seller and Preneed Agent.

The board was in agreement that the dates on the Proposed Emergency Rule Handout (5) should be changed to October 31, 2009. There is a finding of confident and substantial evidence to support the need for this rule.

**Emergency Rules Following 8-5-09 handout:**

- **Emergency rule: Corporation must be represented by an attorney:**  
Motion was made by Gary Fraker and seconded by Todd Mahn to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Payment is not determining factor of "practice of funeral directing"**  
Motion was made by Gary Fraker and seconded by Todd Mahn to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Pre-need seller and agent must be licensed in Missouri**  
Motion was made by Gary Fraker and seconded by Todd Mahn is approve this rule with the change from license to register and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: "Final Disposition" as defined in Chapter 193**  
Motion was made by Gary Fraker and seconded by Jim Reinhard to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency Rule: “Provider” includes funeral establishment that has agreed to undertake obligations of pre-need contracts pursuant to Chapter 436:**

Motion was made by Todd Mahn and seconded by Jim Reinhard to approve with the changes in (2) to “any provider” and need to specify new 436 with new numbers and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Display of License:**

Motion was made by Todd Mahn and seconded by Gary Fraker to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Corporate ownership of a corporate licensee**

Motion was made by Gary Fraker and seconded by Jim Reinhard to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Licensee must file application for new license if change in ownership:**

Motion was made by Todd Mahn and seconded by Jim Reinhard to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Failure to renew a license within 2 years requires completion of application process:**

Motion was made by Jim Reinhard to approve this rule, this motion was withdrawn. Motion was made by Gary Fraker and seconded by Todd Mahn to withdraw this emergency rule that there is not a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Licensed funeral director must report each seller for whom he or she is an agent:**

Motion was made by Gary Fraker and seconded by Todd Mahn to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Pre-need agents must take Missouri law exam.**

Motion was made by Todd Mahn and seconded by Gary Fraker to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor

with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Normal market fluctuation resulting in a shortage in a pre-need trust is not a basis for injunctive relief:**

Motion was made by Todd Mahn and seconded by Jim Reinhard to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with all voting in favor with no votes in opposition. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Financial welfare cause for injunction:**

Motion was made by Gary Fraker and seconded by Todd Mahn to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

**Open Discussion – Dialogue with General Public Attending Open Session Continuation and/or Completion of any Unfinished Open Session Business**

Nothing further to report.

**Adjournment**

A motion was made by Gary Fraker and seconded by Todd Mahn to adjourn. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety. The meeting adjourned at 3:45 p.m. on Wednesday, August 19, 2009.

Executive Director: Sandy Sebastian

Approved by the Board on: 6/14-16/10

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MISSOURI STATE BOARD OF EMBALMERS  
AND FUNERAL DIRECTORS

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TRANSCRIPT OF MEETING

DIVISION OF PROFESSIONAL REGISTRATION  
3605 MISSOURI BOULEVARD  
JEFFERSON CITY, MISSOURI

AUGUST 19, 2009  
9:30 A.M. - 3:40 P.M.

1 CHAIRMAN: Okay. The meeting is  
2 called to order. Roll call. Gary Fraker?  
3 MR. FRAKER: Yes, sir.  
4 CHAIRMAN: Jim Reinhard?  
5 MR. REINHARD: Here.  
6 CHAIRMAN: Todd Mahn?  
7 MR. MAHN: Here.  
8 CHAIRMAN: Joy Gerstein?  
9 MS. GERSTEIN: Here.  
10 CHAIRMAN: John McCulloch?  
11 MS. DUNN: Absent.  
12 CHAIRMAN: Absent. All right. So --  
13 MR. REINHARD: Make a note of that.  
14 CHAIRMAN: Make a note of that. And  
15 it's on record even, so -- all right. We  
16 need a motion for the agenda.  
17 MR. FRAKER: So moved.  
18 CHAIRMAN: Gary Fraker so moves.  
19 MR. MAHN: Second.  
20 CHAIRMAN: Todd seconds. Jim? Yes.  
21 All right. So done. So, need an approval of  
22 the minutes from last week.  
23 MR. MAHN: First.  
24 CHAIRMAN: First.  
25 MR. FRAKER: Second.

1 CHAIRMAN: Gary Fraker seconds. Jim?

2 MR. REINHARD: Third.

3 CHAIRMAN: Jim thirds it. All right.

4 So done. Okey doke. Moving right along.

5 Turn the page. Do you want to address future  
6 meetings, anything specific?

7 MS. DUNN: Everybody knows what day the  
8 meeting is next week; correct? April 25th  
9 starting at 9:00 a.m.

10 UNIDENTIFIED: April?

11 UNIDENTIFIED: August.

12 MS. DUNN: I'm sorry. August. August  
13 25th starting at 9:00 a.m. here at the  
14 Division. And, also, we will determine this  
15 week if we're going to meet in open on the  
16 26th, as well. We don't know that yet.

17 MS. RUSSELL: I'm sorry, Becky. You  
18 said August 26th, also?

19 MS. EULER: Maybe.

20 MS. DUNN: Possibly.

21 MS. RUSSELL: Possibly.

22 MS. DUNN: It just depends on how  
23 we're doing with the progress on the rules and  
24 things. But, for sure, the 25th next week,  
25 9:00 a.m., here at the Division.

1 CHAIRMAN: Okay. Do you want to make  
2 the thought about the financial proposals and  
3 all that?

4 MS. DUNN: Oh. We've had financials  
5 on every week. Sherry Hess and Connie  
6 Clarkston are working on those. We will have  
7 that portion of the meeting next week on the  
8 Tuesday agenda. Also, while I have the floor,  
9 there are some new faces. Make sure that you  
10 say your name clearly if you make a statement,  
11 come up to the microphone if the court  
12 reporter can't hear you, and who you're with.  
13 If you have written comments, make sure that  
14 we get those so that they can be a matter of  
15 the record.

16 CHAIRMAN: Okay. Which reminds me. I  
17 didn't do the introductions and I apologize.  
18 You heard the roll call of the Board, so you,  
19 obviously, know who they are. Obviously, this  
20 is Becky Dunn, our executive director; Earl  
21 Kraus, senior legal counsel for the Division;  
22 our court reporter, and tell us your name.

23 THE REPORTER: Kristy Bradshaw.

24 CHAIRMAN: Kristy Bradshaw. Sharon  
25 Euler with the attorney general's office;

1 Inspector Lori Hayes back there taking care of  
2 what I love most there, the coffee pot. So  
3 -- and Mr. Stalter, if you'll take it from  
4 there and let's go around the room.

5 MR. STALTER: Bill Stalter, Stalter  
6 Legal.

7 MR. SPEAKS: Doug Cassity, National  
8 Prearranged Services.

9 MS. DUNN: That's not true.

10 CHAIRMAN: Wait till somebody buys the  
11 minutes recorded with that on there.

12 MR. SPEAKS: Brad Speaks from Speaks  
13 Funeral Home.

14 MR. BROWNLEE: Richard Brownlee, I'm  
15 counsel for Assurant, which sells the  
16 insurance product for a lot of this in the  
17 nation.

18 CHAIRMAN: Thank you.

19 MR. WARREN: Mark Warren, Inglish &  
20 Monaco, for the Missouri Preneed Coalition.

21 MS. NEUMANN: Barb Neumann,  
22 representing Representative Meadows' office.

23 MS. RUSSELL: Darlene Russell, CFL  
24 Preneed.

25 MR. OTTO: Don Otto, Missouri Funeral



1 Directors and Embalmers Association and  
2 Missouri Funeral Trust.

3 MS. SUMMERVILLE: Kalene Summerville,  
4 Missouri Funeral Directors Association and  
5 Summerville Funeral Home.

6 MR. MOODY: Chris Moody, Moody &  
7 Associates, on behalf of SCI.

8 CHAIRMAN: All right. Thank you all  
9 for coming today and being a part of this and  
10 helping us work through all this. And the  
11 sign-in sheet is moving, or just remember to  
12 do it.

13 MS. DUNN: No. It's at the door.  
14 Please make sure that you sign in, if you  
15 would, please.

16 CHAIRMAN: We definitely need that, so  
17 please remember to do that. Okay. Next  
18 thought, and I guess where that would be is I  
19 was speaking with Earl here about how this  
20 thing is going with the emergency rules and  
21 things, and I thought it might just be a nice  
22 thing for him to give us a little update on  
23 that. So, you can address that.

24 MR. KRAUS: Well, we have -- there are  
25 some draft rules on the Web site. There are

1 other draft rules that we have almost  
2 together. What we've been trying to do is, as  
3 we march through each section, then get the  
4 directions from the Board as to what to draft  
5 rules about. Then we're putting those draft  
6 rules together with the intention of looking  
7 at them at a subsequent meeting. Last  
8 meeting, we went the whole meeting going  
9 through section by section, so we didn't get  
10 to discussion about previously drafted rules.  
11 We're hoping today that we'll get through  
12 these sections and then be able to move on to  
13 actually talk about draft rules that are  
14 already drafted, so that's kind of where we  
15 are.

16 CHAIRMAN: Okay. Thank you, sir. Oh.  
17 Ground rules. Again, everybody has pretty  
18 much been here. Ground rules are, we need you  
19 to speak clearly, say who you are for the  
20 court reporter so she can get that on tape.  
21 Side conversations get things totally  
22 confused, so we need to remember her because  
23 she has to try to get every word of this on  
24 paper, so we would appreciate that. Introduce  
25 yourself, if I didn't say that a while ago,

1 whenever you speak so she knows who you are.

2 So, we appreciate all your help in those areas  
3 and that will make her life a lot simpler, we  
4 hope. So, all right. Anything else I've  
5 missed or we're ready to go?

6 MS. DUNN: We're ready to go.

7 CHAIRMAN: We're ready to go. All  
8 right.

9 MS. DUNN: Oh, Sharon might have  
10 something.

11 CHAIRMAN: Oh. Yes, ma'am. Yes?

12 MS. EULER: I do have something. I  
13 just wanted to report back that Earl and I  
14 talked this morning with Mark Gutchen, who is  
15 general counsel for the CHSS --

16 MR. KRAUS: He's counsel within  
17 Division of Legal Services.

18 MS. EULER: -- or DLS or Division of  
19 Legal Services, with regard to the Medicaid  
20 issue, and we asked for his input and his  
21 department's input on the provision we talked  
22 about last week involving qualifying for  
23 public assistance, and he said he would talk  
24 with his people and be back in touch with us  
25 by next week. So, if we need a rule on that,

1 we should have some guidance from the  
2 Department.

3 CHAIRMAN: All right. It sounds good.

4 MS. EULER: And, also, I apologize,  
5 again, but I need to leave for a meeting  
6 downtown here in a few minutes, but I should  
7 be back by -- (inaudible.)

8 CHAIRMAN: Okay. And I'll also put  
9 out that we will be breaking at noon for  
10 lunch. Start-up time will be 1:30 today as  
11 opposed to 1:00, so anybody else that's  
12 interested, the Board is going to run down to  
13 the Capitol and pay their respects to Governor  
14 Hearnest that is in state there, so if any of  
15 you all want to do the same, if you didn't  
16 know that was happening, you can do the same.  
17 So -- all right.

18 MR. KRAUS: That reminds me, too.  
19 Just before 2:30, I'll need to step out  
20 briefly to participate in a phone hearing, but  
21 then I'll be right back in.

22 CHAIRMAN: Okay.

23 MR. KRAUS: I don't expect it'll take  
24 very long.

25 CHAIRMAN: We're going to move very

1 well today; I just feel it. So, this is  
2 going to work good, so -- all right. Senate  
3 Bill 1 implementation, group #3. 436.456,  
4 purchase or cancellation, if you have your  
5 Bibles, beginning at verse 1, I suppose. So,  
6 take it away.

7 MR. KRAUS: All right. I think there  
8 are a couple of sets of comments, or at least  
9 one that are not incorporated within this  
10 document, so we'll try to reference back and  
11 forth with those comments as we go through.  
12 So, if we're going along and we miss some of  
13 those or there's something in those that you  
14 want to bring it up, then please bring up as  
15 we go through the sections.

16 MS. EULER: And just so I'm clear, I  
17 know there was a problem with Don Otto's and  
18 MFTA's comments. Are those the only ones that  
19 are separate that we need to follow along with?

20 MR. KRAUS: I think so.

21 MS. EULER: I know that Bill got his in  
22 promptly.

23 MR. STALTER: Thank you.

24 MS. DUNN: Don's comments are four  
25 pages. The first one we handed out were two,

1 so everyone should have a four-page document.

2 MS. EULER: And it's -- well, it's  
3 three.

4 MS. DUNN: Three? Okay. Three.

5 MR. KRAUS: Three, but double-sided?

6 MS. EULER: Yeah.

7 MS. DUNN: Okay.

8 MS. EULER: All right.

9 MR. OTTO: You didn't think I would  
10 get it all done.

11 MS. DUNN: At 1:45 a.m.

12 MR. OTTO: (Inaudible.)

13 CHAIRMAN: Just saying that, tell us  
14 again -- anybody that wants to make comments  
15 for next week, if there's anything to comment  
16 left on -- I guess there will be after today.  
17 But --

18 MS. EULER: The rules.

19 CHAIRMAN: Yeah. The rules. So, you  
20 need those to you by when?

21 MS. EULER: Friday.

22 CHAIRMAN: By Friday. So, those  
23 comments need to be in by Friday to be able  
24 to get -- unless you get a special handout.  
25 I guess --

1 MR. KRAUS: Which works, too, but if  
2 you want them to be a part of this, then --

3 MS. EULER: Well, and just -- August  
4 28th is next week, so next week is more  
5 important because the rules need to be voted  
6 on next week for the emergency rules, so they  
7 need to be voted and approved next week so  
8 that they can be filed on Thursday, the 28th  
9 -- I think, on Thursday or Friday.

10 MR. KRAUS: I think that's Friday.

11 MS. EULER: Friday. So --

12 CHAIRMAN: So, we need to be able to  
13 do that if we can.

14 MS. EULER: So, timeliness is  
15 important.

16 CHAIRMAN: Okay.

17 MS. DUNN: Earl, one other thing that  
18 I would like for the Board to approve today is  
19 the draft form for the intent of application.

20 MR. KRAUS: Notice of intent?

21 MS. DUNN: Yes.

22 MS. EULER: Do we want to do that  
23 first?

24 MS. DUNN: Does the Board have a copy  
25 of the notice of intent?

1 MS. EULER: I have it.

2 MS. DUNN: Sharon and I worked on just

3 some cleanup language on the notice of intent

4 last night. Not a lot of big differences, but

5 Lori is giving it out today. And this one is

6 not on our Web site yet, and hasn't been

7 downloaded and sent in for application yet

8 like some did -- Darlene. We've got some

9 filled out and sent in.

10 MR. STALTER: So, you're not going to

11 accept those?

12 MS. DUNN: No.

13 MS. GERSTEIN: Mr. Chairman? Hello?

14 MS. DUNN: Yes.

15 MS. EULER: Yes. We're here, Joy.

16 MS. GERSTEIN: This is Joy from the

17 State Fair, and I need to drop off.

18 MS. DUNN: Okay.

19 MS. GERSTEIN: It's raining very hard

20 here.

21 MS. DUNN: Okay.

22 MS. GERSTEIN: I have a whole bunch of

23 volunteers, so I need to get back over there.

24 MS. DUNN: Okay. Thanks, Joy.

25 MS. GERSTEIN: Okay? So, if you want



1 -- I can come on later if you would like.

2 MS. DUNN: Okay. We will -- we'll get  
3 in touch with you.

4 MS. GERSTEIN: Okay. Thank you. Bye.

5 MS. DUNN: Okay. Thank you.

6 CHAIRMAN: So, Board, sometime through  
7 the day, definitely look at this, make sure  
8 you're happy with it or if you have questions  
9 about it, and then we'll go back to this along  
10 the agenda instead of -- because, otherwise,  
11 it's just give it the stamp of approval and  
12 move on. So, I'll give you that opportunity  
13 and then we'll pick it back up and decide  
14 before the day is over. Okay. So, are we  
15 ready to proceed?

16 MS. DUNN: Yes. Proceed.

17 CHAIRMAN: Or do you want now? Do you  
18 want now?

19 MR. REINHARD: Well, I've got a point,  
20 you know. The point is, is Don brought this  
21 in today. The comments are supposed to be  
22 received by Friday. I like the format where  
23 we have it all right there, so you have to  
24 switch back and forth with these, so I would  
25 really appreciate the association getting

1 theirs in so we could incorporate it with the  
2 rules.

3 CHAIRMAN: Okay. All right.

4 MS. EULER: And I'll be back.

5 CHAIRMAN: And show that Sharon will  
6 be back.

7 MS. EULER: If you need me for anything  
8 important, you can send me a Blackberry or  
9 make note of it and I'll address it when I  
10 get back.

11 MS. DUNN: Okay.

12 CHAIRMAN: All right.

13 MR. KRAUS: All right. So, we start  
14 into group #3, Section 436.456, comment K1.  
15 Let's see. With regard to the written notice  
16 and setting out what that should entail in a  
17 rule, and one suggestion was whether  
18 notarization should be required, also. Let's  
19 see. It looks like it's with regard to  
20 joint-account fund and preneed contracts and  
21 the written notice of cancellation. I think  
22 on other notices that we've had throughout --

23 MS. DUNN: We have notarization.

24 MR. KRAUS: -- we have set out what --

25 MS. DUNN: We have a notarized

1 statement on those.

2 MR. KRAUS: Okay. Do you have wording?

3 MS. DUNN: Yes.

4 CHAIRMAN: And we said that's what  
5 you're speaking of is the former things that  
6 we looked at, we did that, too, also; correct?

7 MR. KRAUS: I think so; isn't that  
8 right?

9 MS. DUNN: Uh-huh. Yes. Right.

10 CHAIRMAN: That's what I'm thinking.  
11 Okay. So, input? Just to proceed with as we  
12 did on all the others or -- yes?

13 MR. FRAKER: I have a quick question.  
14 Is this the purchaser signing the --  
15 requesting a refund or a transfer -- is this  
16 the purchaser that you're asking to have their  
17 signature notarized on this, or someone acting  
18 on behalf of the purchaser? (Inaudible.)

19 MR. KRAUS: This is what the purchaser  
20 shall do. In the very top section there, it  
21 has an order to cancel the contract, the  
22 purchaser shall --

23 MR. FRAKER: Okay. In many instances,  
24 the purchaser is not available to do this, or  
25 someone that may not be a --

1 MS. DUNN: Gary, you have to speak up  
2 a little bit.

3 MR. FRAKER: -- that may not be a --  
4 have power of attorney. I'm just looking at  
5 -- I think we talked about this the other day  
6 just a little bit, someone acting on behalf of  
7 that person that's not been appointed their  
8 legal guardian. Will we accept that as the  
9 next evidence?

10 CHAIRMAN: It's going to have to be --  
11 it would have to be somebody that would be in  
12 legal capacity, though, to come in and just  
13 say I want to cancel their contract, wouldn't  
14 they?

15 MR. KRAUS: Yeah, they would. And I  
16 remember we did talk about that, how a lot of  
17 times, you know, the person who it needs to be  
18 isn't around or --

19 MR. FRAKER: Right.

20 MR. KRAUS: -- and there need to be  
21 decisions made, but I think Martin is right  
22 that to actually cancel the contract, it has  
23 to be someone who has the authority to do that.

24 CHAIRMAN: So, we're talking about  
25 someone --

1 MR. KRAUS: Now, they may need to go  
2 back and obtain the authorities in some way to  
3 do that and then come back.

4 MR. FRAKER: Well, we're not going to  
5 accept another funeral home calling up and  
6 signing. You know, someone says -- your  
7 competitor wants the money. We're not going  
8 to accept that. We've got to accept someone  
9 that's in some legal capacity acting on behalf  
10 of that individual, so --

11 CHAIRMAN: I would think.

12 MR. KRAUS: Yeah. I mean -- and, of  
13 course, this is just talking about canceling.  
14 If you're talking about designating a  
15 different provider, that's different.

16 MR. FRAKER: I understand. But it all  
17 goes back to that.

18 MR. KRAUS: But with respect to  
19 canceling, it's either got to be the person or  
20 someone who has authority to act for that  
21 person through power of attorney or guardian  
22 or --

23 MR. FRAKER: Does that need to be  
24 defined in this?

25 MS. RUSSELL: I was going to let Earl

1 finish, but I had a question about the written  
2 notice. Would it be possible in a rule to  
3 put on a cancellation that if it's an  
4 irrevocable contract, that the written notice  
5 must include a notarized statement indicating  
6 the individual is not on public assistance? I  
7 mean, that has been a point many years in  
8 regards to canceling an irrevocable when the  
9 person is not on public assistance. I mean,  
10 most of the funeral homes have always allowed  
11 that, but if you had a rule that said that a  
12 notice of cancellation to include a written  
13 statement that they are not on public  
14 assistance, because the intent was to put the  
15 person -- to make the contract irrevocable for  
16 going on public assistance.

17 MR. KRAUS: But they are not currently  
18 on public assistance?

19 MS. RUSSELL: Correct.

20 MR. KRAUS: Or that they never have  
21 been?

22 MS. RUSSELL: For a cancellation.

23 MR. FRAKER: Personally, I don't see  
24 what difference it makes because those  
25 irrevocable things are primarily for the

1 public assistance.

2 MS. RUSSELL: Exactly, Gary. But the  
3 problem occurs is that some funeral homes will  
4 hold a purchaser hostage saying I cannot  
5 cancel an irrevocable. And when the intent of  
6 why the purchaser bought it and signed the  
7 irrevocable wasn't because of public  
8 assistance, the funeral director just told  
9 him, well, down the road, in case you want to  
10 get eligible for public assistance, you just  
11 sign here -- for down the road, you know.  
12 But say that person never went on public  
13 assistance, got mad at the new funeral-home  
14 owner, the funeral home changed hands, he got  
15 mad, don't like that guy anymore -- the new  
16 owner -- and wants to change, the funeral  
17 director can say, no, it's irrevocable, we're  
18 not changing it.

19 MR. KRAUS: Well, actually, that does  
20 go towards what Sharon and I were talking  
21 about with Mark Gutchen this morning.

22 MS. RUSSELL: Okay. Good.

23 MR. KRAUS: And how to -- how best to  
24 address that to where you're just talking  
25 about the money and not the other parts of the

1 contract.

2 MS. RUSSELL: Exactly.

3 MR. OTTO: Don Otto. Well, the  
4 problem is because of the current 436. The  
5 way cancellation is worded, I think, gives the  
6 consumer the right to cancel an irrevocable  
7 contract, which is kind of a weird sentence,  
8 to cancel something that's irrevocable. That  
9 language has been changed with Senate Bill 1,  
10 and I think you can make an argument that the  
11 way to cancel -- the way the irrevocable  
12 language is worded, it says the consumer may  
13 irrevocably waive their right to cancel. Now,  
14 that isn't the way it's worded really under  
15 the current law on trusts. It is on joint  
16 accounts, but not on trusts, which left the  
17 door open to allow us to cancel an irrevocable  
18 contract as long as we got a waiver or  
19 something that they didn't owe any money. I'm  
20 not comfortable with saying that a consumer,  
21 under Senate Bill 1, can cancel an irrevocable  
22 contract. They can switch providers, not  
23 doubt about that, but I'm not comfortable -- I  
24 don't think -- there's a good argument that  
25 they cannot cancel an irrevocable contract



1     irrespective of whether they receive public  
2     assistance or not because it says irrevocably  
3     waive their right to cancel the contract.

4             MR. KRAUS: Well, and I think this  
5     provision is focused on that the person may  
6     cancel the contract if designated as revocable  
7     without cause --

8             MR. OTTO: Yeah. This provision is  
9     for just revocable. We got off of the  
10    irrevocable issue.

11            MR. KRAUS: -- so that's just -- right.

12            MR. OTTO: I'm not sure you can cancel  
13    an irrevocable contract under the new law.

14            CHAIRMAN: Just because it's  
15    irrevocable.

16            MR. OTTO: Because that's what it --  
17    that's the way irrevocable is kind of defined  
18    in there now is a person may make a contract  
19    irrevocable by irrevocably waiving their right  
20    to cancel or something like that on the way  
21    it's worded under Senate Bill 1, and I don't  
22    know how you get around that.

23            CHAIRMAN: There's your challenge.

24            MR. OTTO: And that might be -- Sharon  
25    might have a good input on that, too.

1 MR. KRAUS: Yeah, she might.

2 MR. OTTO: I mean, that is a  
3 potentially unfair situation that I don't like  
4 because somebody could have made an  
5 irrevocable contract on anticipation of going  
6 on public assistance in the future. They  
7 never get on public assistance in the future,  
8 now they want to cancel it. On its face,  
9 there is no good reason why they shouldn't be  
10 able to. The State of Missouri is not owed  
11 any money. But the way Senate Bill 1 is  
12 worded, I'm not sure they can.

13 CHAIRMAN: Okay. So, I guess the  
14 comment or question is, they obviously -- do  
15 they need to work on rules toward that?

16 MR. MAHN: Yes.

17 MR. KRAUS: Certainly, for the notice.

18 MR. FRAKER: You know, there are some  
19 parameters here that need to be addressed.  
20 Say, if the person moves away. I mean,  
21 there's a whole slew of things that could  
22 change this whole -- could change the  
23 contract. You know, first and foremost, and  
24 in most cases, this person moves out of the  
25 area. You know, you can't very well hold them

1 to that irrevocable thing whenever they're not  
2 even in the area. I mean, that's ridiculous.  
3 So, I think it's up to the individual. If  
4 they want their money back and they've got  
5 enough smarts to come in and sign the paper,  
6 they know what they should be held accountable  
7 for signing in the irrevocable.

8 MR. REINHARD: Well, write a rule that  
9 says you can't make a contract irrevocable  
10 unless you are on or you're getting ready to  
11 file for assistance.

12 CHAIRMAN: I agree with that.

13 MR. REINHARD: And the hell with this  
14 bullshit of putting it down if we think we're  
15 going to get. Let's be on it.

16 CHAIRMAN: Well, I think the line  
17 actually says you are applying for, but I'd  
18 have to look at that, so --

19 MR. FRAKER: I think there needs to be  
20 some -- (inaudible) -- for this. Earl, you  
21 understand what I'm talking about?

22 MR. KRAUS: I think so.

23 CHAIRMAN: Okay. Any other comments  
24 in the general audience to follow that thought?

25 MR. FARROW: I have one. There's

1 really two issues with irrevocable. One is,  
2 obviously, the Medicaid. The second, there  
3 are families that just want it to be  
4 irrevocable so their children can't make  
5 changes if they become incapacitated, things  
6 like that, you know. So, I really think  
7 you're limiting someone's rights when you just  
8 arbitrarily say it's -- you can make changes  
9 to irrevocable. And I do think the contracts  
10 specifically state what irrevocable is and  
11 they have an option to make this not  
12 irrevocable, so I don't know that it has to be  
13 in the law that they can change irrevocable.  
14 And, also, if you do that, Medicaid -- you're  
15 really changing kind of the spirit of the  
16 Medicaid law if you allow someone to make  
17 changes to those things. So, I don't agree  
18 that -- I mean, I think the laws was written  
19 for Medicaid -- or for irrevocable makes  
20 sense, and I wouldn't see any reason to change  
21 it.

22 MR. KRAUS: Let me ask this: Do you  
23 think that the person who entered into the  
24 contract should be able to make changes to it?

25 MR. FARROW: Well, I think they get a

1 choice. You're given a choice at the time  
2 whether to make it irrevocable or revocable.  
3 There are families that request to make it  
4 irrevocable for a number of reasons. One is  
5 they have a method of disposition that they're  
6 choosing. They know their family will make  
7 changes and they don't want changes to that --

8 MR. KRAUS: Well, of course, if their  
9 family doesn't have authority, then they can't  
10 make any changes whether it's revocable or  
11 irrevocable unless they later get the  
12 authority to do that.

13 MR. FARROW: But they can if they  
14 become incapacitated, you know. I mean,  
15 irrevocable is really just somebody's choice.  
16 Now, I could agree that there may need to more  
17 verbiage as to the definition of irrevocable  
18 or even a form that folks need to sign, but I  
19 wouldn't take away a family's right to make it  
20 irrevocable because we think we're limiting  
21 funeral homes more.

22 MR. MAHN: But I think if somebody  
23 passes away, the family, whether it's  
24 irrevocable or not, can change it from a  
25 traditional to a cremation. The deceased has

1 no legal rights anymore.

2 CHAIRMAN: Right.

3 MR. MAHN: So, that irrevocable don't  
4 work in that way, you know. And I think if  
5 they have you on Medicaid, then if they're  
6 wanting a refund, and they've been on  
7 Medicaid, the money goes to the State, because  
8 they're taking --

9 CHAIRMAN: It goes to the State.

10 (Several people speak simultaneously.)

11 MR. MAHN: It's the law, you know.  
12 So, I think we're just trying to clear it up,  
13 you know, as how we want it to read in Senate  
14 Bill 1.

15 MR. REINHARD: Well, so I want to ask  
16 this gentleman a question. So, you're saying,  
17 like, if you had an irrevocable cremation, the  
18 family walked in and says, oh, we want to buy  
19 a proper casket and a vault, and we don't want  
20 the cremation anymore, you can say, oh, this  
21 is irrevocable, we can't change it?

22 MR. FARROW: They could -- if someone  
23 had passed away or if the person is still  
24 living?

25 MR. REINHARD: But that's what they

1     wanted. I'm talking about if they passed away.

2             MR. FARROW: If they were passed away,  
3     then, as this gentleman said, that the family  
4     has the right to make changes. But while  
5     they're alive --

6             MR. REINHARD: But they can't before?

7             MR. FARROW: Huh?

8             MR. REINHARD: And in your eyes, they  
9     can't before; right?

10            MR. FARROW: Right. If it's  
11     irrevocable.

12            MR. REINHARD: If the person is alive  
13     and competent --

14            MR. FARROW: Right. And if they want  
15     me to make changes -- as an example, what if  
16     someone had bought -- purchased an expensive  
17     casket and that was their choice, that was  
18     what they wanted, but now the family -- and  
19     they were still living, but the family wanted  
20     to change it?

21            MR. REINHARD: Couldn't because --

22            MR. FARROW: Because it's irrevocable.

23            MR. REINHARD: Well, plus, it's --  
24     they're not incompetent. I mean, they would  
25     have to make the change themselves, so where

1 does the irrevocable come into play?

2 MR. FARROW: What if they became  
3 incompetent or incapacitated?

4 MR. MAHN: But if they did, then the  
5 family could still change it.

6 MR. FARROW: How?

7 MR. MAHN: They could still -- the  
8 family, if they become incapacitated, the  
9 family still had the right to change it.

10 MR. FARROW: Not if it was irrevocable.

11 MR. MAHN: Yeah, they can.

12 MR. FARROW: (Inaudible.)

13 MR. MAHN: Uh-huh. Yeah.

14 MR. KRAUS: Well, maybe that's  
15 something we need to try to clarify.

16 MR. MAHN: Well, they're going to  
17 either change it then or they're going to  
18 change it when they die. It doesn't really  
19 make any difference. They'll just wait, you  
20 know.

21 CHAIRMAN: They would still have the  
22 option.

23 MR. MAHN: Well, right. The end  
24 result, they'll have the option. It's kind of  
25 a sad deal. I mean, you know, Mother doesn't



1 want to be cremated and she bought a \$10,000  
2 funeral, and the kids want to cremate her and  
3 --

4 CHAIRMAN: Then give right of  
5 sepulcher to somebody else.

6 MR. KRAUS: Wouldn't they still have a  
7 problem after they pass away where if, let's  
8 say, the contract is for certain products at  
9 certain prices, and the contract is  
10 irrevocable. And after they die, they want to  
11 do something different.

12 MR. MAHN: Only if she is on Medicaid.

13 MR. KRAUS: They're certainly free to  
14 do something different, but they don't get the  
15 money back from that contract.

16 MR. MAHN: If she wasn't on Medicaid,  
17 they do.

18 MR. KRAUS: Really?

19 MR. MAHN: Yeah.

20 CHAIRMAN: So, are you going to fight  
21 it in court?

22 MR. MAHN: Yeah.

23 CHAIRMAN: I mean, that's the only  
24 option; right? That's the only option.

25 MR. MAHN: I've got a case going like

1     that yesterday. That's why I'm real familiar  
2     with it right now.

3             MR. STALTER: Now, I didn't hear what  
4     you were discovering. That's what I thought.  
5     When you make something irrevocable, you're  
6     talking about the funding of itself.

7             MR. MAHN: Right.

8             MR. STALTER: And so, if they become  
9     eligible for assistance. Now, if they've  
10    accepted assistance and then they change after  
11    the death, then it is that the State gets to  
12    come back, they're subrogated to the rights of  
13    the funding.

14            MR. MAHN: Right.

15            MR. STALTER: Now, if it's a case like  
16    this where the person who entered the contract  
17    wants a specific funeral, you know, that's a  
18    contract right in it on their purchaser's  
19    death, or somebody succeeds to that, and I  
20    think that's when we would say I kind of  
21    agree. If the family comes in, they want to  
22    change things, you know, really, are you meant  
23    to enforce that contract under its terms? The  
24    issue about this irrevocability is, I think,  
25    about the funding part of it.

1           MR. KRAUS: And that's where we were  
2 focused this morning with talking with Mark  
3 over at Social Services is focusing on the  
4 funding part as to the irrevocability as  
5 opposed to the other parts, which, really,  
6 there are ways for families to make changes  
7 with respect to that, maybe not so much with  
8 the funding, which is really the intent of it,  
9 I think. And we may be able to address that  
10 under that section of the bill.

11           MR. STALTER: One of the abuses we saw  
12 under this was where you had some sellers who  
13 would make every contract irrevocable. And,  
14 you know, actually, there was a legitimate  
15 reason for doing that and it was for tax  
16 purpose. There was an argument if the  
17 contract was irrevocable, the consumer didn't  
18 have a right to the funds under any  
19 circumstance, so then you would say it would  
20 never be taxable to the purchaser, but the IRS  
21 blew through that. I mean, that's -- I mean,  
22 I can see why people did that years ago, but  
23 that just doesn't work anymore. So, it  
24 basically, I think, comes down to this funding  
25 issue.

1 CHAIRMAN: Sir, if you wouldn't mind  
2 introducing yourself. We all have been --

3 MR. FARROW: I apologize. My name is  
4 Doug Farrow; I work for Stuart Enterprises.

5 CHAIRMAN: Okay. Thank you. We all  
6 had the opportunity for that earlier. All  
7 right. Any other questions, comments? The  
8 next point?

9 MR. KRAUS: All right. There's a  
10 comment here, K2, is there a minimum amount  
11 the purchaser must receive? Any thoughts on  
12 that?

13 MR. OTTO: I mean, that would be  
14 governed by the provider-seller agreement.

15 MR. KRAUS: I don't know that we've  
16 got to set that out in a rule, you know,  
17 without it being in statute, so --

18 MR. OTTO: (Inaudible.)

19 MR. KRAUS: I mean, unless it would  
20 simply be clarifying what's already in the law.

21 MR. MAHN: I'm going to hold up on  
22 each one of them.

23 MR. KRAUS: No other thoughts on that?

24 MR. MAHN: Wasn't there a percentage on  
25 cancellation? I wasn't here last week. The

1 minimum -- a cancellation percentage or not?

2 MR. FRAKER: It was just trusts,  
3 wasn't it? I think it was just trusts, wasn't  
4 it, that we talked about?

5 MR. MAHN: We're talking about trusts  
6 here; right?

7 CHAIRMAN: I don't know.

8 MR. MAHN: I mean, if there's --

9 MR. KRAUS: I mean, this talks about  
10 that it shall distribute all deposited funds  
11 to the purchaser. And I don't know if the  
12 comment was going towards talking about what  
13 all deposited funds means, maybe.

14 MR. MAHN: Well, I mean, the -- I  
15 don't know where to find it at in here, but I  
16 thought there was a percentage amount on  
17 cancellations. I don't know if it was 95  
18 percent or 90 percent. I can't recall.

19 MR. KRAUS: I mean, I think there was  
20 discussion about that at one point. I don't  
21 know if that made it into the final version.

22 MR. OTTO: Well, I think that we're --  
23 yeah. There is, but that's two paragraphs  
24 down. I think -- I mean, for some -- I guess  
25 this is pointed to the interest provisions, so

1 I get interest shall be distributed as  
2 provided in the agreement with the seller. I  
3 think K1 and K2 kind of go together with some  
4 kind of -- I mean, I don't know who -- where  
5 that comment is from, but I mean, the statute  
6 says interest is distributed as per the  
7 contract, period.

8 MR. STALTER: And part of those are my  
9 comments because if you look at some of the  
10 old joint-account contracts, you know, the  
11 income would be -- or we say interest, so  
12 we're talking about a joint -- you know, some  
13 kind of depository account. You know, the  
14 interest was to go back to the consumer except  
15 to the extent that you had reasonable  
16 expenses. And you see -- well, you see some  
17 of these contracts where the funeral home  
18 would define reasonable expenses to be all the  
19 income. So, by contract, they have built that  
20 in their preneed contract, their joint-account  
21 contract that, you know, if you cancel, then  
22 my reasonable expenses are all accrued income.  
23 So, in a sense, if -- you know, I think you  
24 could still have that authority under the  
25 statute the way it's been written to say what

1 -- you know, if they think that they are  
2 entitled to all the income on a cancellation  
3 unless you put a rule otherwise what is  
4 reasonable expense on a cancellation of a  
5 joint-account contract.

6 MR. KRAUS: Well, and is reasonable  
7 what's agreed to in the agreement?

8 MR. STALTER: Yeah. Yeah, I know.

9 MR. KRAUS: Do you want to leave that  
10 alone?

11 CHAIRMAN: I heard leave it alone.

12 MR. FRAKER: I think so.

13 MR. KRAUS: Any other thoughts?

14 MR. MAHN: It could be a can of worms.  
15 Leave it alone, I guess.

16 MR. KRAUS: All right.

17 MS. DUNN: Anything that you leave  
18 alone leaves up to interpretation and then  
19 we're not always sure how to respond to it.  
20 But I said that last week, too, so --

21 MR. REINHARD: That's why we have  
22 lawyers, don't we?

23 MR. MAHN: Call the counsel over here  
24 and they can interpret for us.

25 CHAIRMAN: Well, actually, what I'm

1 hearing is probably, really, just what it is.  
2 It'll be whatever the funeral director decides  
3 to write in the contract, and that's as open  
4 from giving it all back to keep it all.

5 MR. KRAUS: And if a purchaser agrees  
6 to that --

7 CHAIRMAN: Unless we write a rule.

8 MS. RUSSELL: Did I understand, Bill,  
9 you to say that, I mean, some funeral homes  
10 would actually put in their joint-account  
11 contract that the reasonable expense of  
12 administering my joint account is all of the  
13 income?

14 MR. STALTER: All accrued income?

15 CHAIRMAN: That's what he said.

16 MS. RUSSELL: And that is a terrible  
17 thing to the consumers. I mean, that is, like  
18 -- I just can't believe that they would do  
19 that, but --

20 MR. REINHARD: Have we had a complaint  
21 on that, Board? No.

22 MS. RUSSELL: Wow. Well, I think --

23 MR. REINHARD: Not that I can recall.  
24 You were on the Board at one time or you  
25 worked for them. Do you ever remember a



1 complaint on that? No.

2 MS. RUSSELL: On joint account?

3 MR. REINHARD: On joint accounts.

4 MS. RUSSELL: Well, this is a little  
5 bit different now because they're become --  
6 it's become joint accounts is -- if Bill is  
7 saying is correct, I know that the legislature  
8 or the people that I talk to had no intent on  
9 a joint account people and they said a  
10 reasonable expense charging the whole income.  
11 I just never --

12 MR. REINHARD: Well, what is it -- it  
13 could be the same argument for trust accounts,  
14 too.

15 MR. STALTER: Yeah. You're right.

16 MS. RUSSELL: Wow.

17 MR. REINHARD: So, what are we arguing  
18 here?

19 MR. KRAUS: Yeah. And I remember some  
20 discussion when they were talking about this  
21 over at the Capitol as to should there be a  
22 certain percentage and should there not be a  
23 certain percentage.

24 MR. REINHARD: It should have been 100  
25 percent, no preneed sold in Missouri, period.

1 MR. OTTO: Don Otto again. We're not  
2 -- this section is talking about when the  
3 consumer cancels, not the -- how much expenses  
4 you take it.

5 MR. STALTER: It is, and that's right.  
6 This is the seller -- or not -- I'm sorry.  
7 For the purchaser.

8 MR. OTTO: Yeah. This is not about  
9 what the reasonable expenses are in  
10 administering trusts. This is about what the  
11 consumer gets back when they cancel. And it  
12 was done on purpose this way to make joint  
13 accounts similar to trusts, because we've had  
14 a lot of people come in that says, hey, a  
15 trust you can keep the interest if a person  
16 cancels. Why can't I keep the interest if I  
17 have a joint account and the person cancels?  
18 And so, this was in here on purpose to allow  
19 the seller the option -- again, it has to be  
20 in the contract-- of keeping the interest if  
21 they so desire upon a cancellation. And I  
22 mentioned this in my comments later, Senator  
23 Scott said several times the funeral home is  
24 not a bank. If the consumer wants to go  
25 invest their money and get all the interest,

1 go to the bank, invest the money, and get all  
2 the interest. But if you're buying a preneed,  
3 it's not the funeral home's responsibility to  
4 be a bank for the consumer. And so, this was  
5 in here on purpose, I believe, to level the  
6 playing field between trusts and joint  
7 accounts, to make joint accounts more of a  
8 viable option for some people. But whether  
9 you like it or not, I think that was the  
10 intent of this specifically is to allow that  
11 interest to be withheld. Now, there probably  
12 is a really good thing to have a rule on with  
13 this is to what to do if the contract does  
14 not say how the interest is going to be  
15 distributed, you know. If the contract does  
16 not say how the interest is going to be  
17 distributed, what happens to the interest?  
18 The statute is silent to that, so that's  
19 probably something that would be -- you know.  
20 That would probably be a good rule to say if  
21 the contract doesn't say how the interest is  
22 going to be distributed upon cancellation, it  
23 goes to the consumer, or something like that.

24 CHAIRMAN: Yes, ma'am.

25 MS. NEUMANN: The question that I

1 have: What in the rules does it say that  
2 you, the funeral director, tells me that you  
3 get to keep 30 percent of my money? Is there  
4 anything that I signed to say if you signed  
5 it, you said that I would notify this, this,  
6 and this? But what is there in the rules now  
7 that says to the consumer when I go in and  
8 you talked me into it and you tell me that,  
9 but don't tell me you get to keep the money,  
10 that I can sign something to say that you told  
11 me that?

12 MR. OTTO: Well, it's -- yeah. It's  
13 the interest, not the money, but yeah.

14 MS. NEUMANN: Well, the interest, yeah.

15 MR. OTTO: There is another provision

16 --

17 MS. NEUMANN: There should be a  
18 coverage for that.

19 MR. OTTO: Well, there's another  
20 provision in here which says the contract --  
21 there is a provision in Senate Bill 1 that  
22 says the contract shall spell out what happens  
23 upon cancellation. And this Board may want to  
24 come up with a standard disclosure that says  
25 this is what you're going to do. But it does

1 say in the statute that the contract will  
2 spell out what happens upon cancellation.

3 MS. NEUMANN: Okay. Because I can see  
4 someone coming in there --

5 MR. OTTO: Oh, yeah.

6 MS. NEUMANN: -- and signing papers  
7 and then finding out later because you didn't  
8 bother to tell me that you get to keep the  
9 money and then I'm out of the interest. I  
10 mean, there should be something that's  
11 covering me as a consumer that you can't rip  
12 me off.

13 CHAIRMAN: For her sake, state your  
14 name.

15 MS. NEUMANN: Oh, I'm sorry. Barbara  
16 Neumann from Senator Meadows' office.

17 CHAIRMAN: All right. Okay. Any more  
18 comments? Where did we end up with -- you're  
19 writing, looking?

20 MR. KRAUS: I think I have except for  
21 Don's thought about whether we need a rule  
22 about what if it's not in the agreement, then  
23 is there a default to giving the money to the  
24 consumer.

25 CHAIRMAN: That's probably okay.

1 MR. KRAUS: Do we need a rule on that?  
2 Yes? No?

3 CHAIRMAN: It's kind of like you get  
4 -- it's kind of like the will thing, you know.  
5 Nobody has a will, but, yeah, you really do.  
6 The State of Missouri created it for you.  
7 What do you think? He needs to know what to  
8 do.

9 MS. NEUMANN: I think there should be  
10 -- Barbara. There should be a disclosure, and  
11 it should be written down that they have to  
12 give you a disclosure. If you don't sign it,  
13 then they can't be held to it.

14 MR. REINHARD: No.

15 MR. STALTER: No, that's not fair.

16 MS. NEUMANN: No?

17 MR. STALTER: We've got a statute  
18 that's there, and, I guess, right now, the  
19 thing is we've got a bit of a gap here. As  
20 long as they cover it in the contract how they  
21 address the interest, then the contract  
22 governs. The issue is here if a contract is  
23 silent, should we have a regulation that says  
24 here's what you'll do with the interest in the  
25 absence of the contract telling us.

1 MS. RUSSELL: It's a pretty good idea.

2 MS. NEUMANN: Yeah.

3 MR. FRAKER: (Inaudible.)

4 MR. REINHARD: Maybe if they're 105  
5 and they have some kind of terminal disease.

6 MR. FRAKER: Well, this is a comment  
7 Jim and I were talking about here. On these  
8 contracts -- and we talked about this before,  
9 Darlene. If a contract is frozen, you know,  
10 and the interest that that thing builds up  
11 offsets, most people will understand that. If  
12 it's paying interest now, it's just token  
13 interest, but, nevertheless, these families  
14 want these things frozen, you know. We do  
15 that. We still freeze them and we keep the  
16 interest. So, I mean, I -- to me, that's --

17 MS. RUSSELL: You're talking about  
18 fulfillment, though, not cancellation.

19 MR. FRAKER: Well, irregardless.

20 MS. RUSSELL: Yeah. We're talking  
21 about the cancellation part of it.

22 MR. REINHARD: We need a rule to say --

23 MR. FRAKER: Well, I -- I know.

24 MS. RUSSELL: But I understand where  
25 you're coming from.

1 MR. FRAKER: But I think that's where  
2 this is headed, Darlene, because, you know,  
3 whether or not the -- that's why -- that's how  
4 we freeze contracts. That's how we freeze  
5 joint accounts.

6 CHAIRMAN: I'm thinking there could be  
7 some advantage in having something spelled out  
8 that says if you haven't addressed it, at  
9 least when the Board gets a complaint, there  
10 is something to stand on that says, well, you  
11 didn't take the time to bother to put it in  
12 there, so --

13 MS. RUSSELL: I think it would make  
14 Becky's job easier when she has that first  
15 complaint and there's nothing in the contract  
16 that it's spelled out.

17 CHAIRMAN: I need everybody in one  
18 accord or whatever, though, but he can at  
19 least look at it and we can always say no  
20 later. What do you think?

21 MR. REINHARD: I'm saying no now.

22 CHAIRMAN: Well, let's just vote.  
23 What do you -- Jim says no. Do you --

24 MR. MAHN: I stepped out for a moment.  
25 What are we saying no to?



1 CHAIRMAN: Okay. The ultimate thought

2 --

3 MR. REINHARD: That you can't step out  
4 anymore.

5 MR. MAHN: I may step out more.

6 CHAIRMAN: The thought is do we need a  
7 rule that, basically, summarizes what happens  
8 to the interest only in a cancellation of the  
9 contract? No fulfillment, nothing like that.  
10 Just cancellation, that if your contract does  
11 not specify what happens whether you keep all  
12 the earned income, whether you divvy it up  
13 however you want, but if there is nothing at  
14 all specified in the contract, it's by default  
15 that all the interest goes back to the  
16 consumer.

17 MR. MAHN: I agree with that.

18 CHAIRMAN: Okay. So, there's one to  
19 one. You're going to break it.

20 MR. FRAKER: No.

21 CHAIRMAN: Okay. So, we don't need it.

22 MR. KRAUS: Let's see.

23 CHAIRMAN: Are we on 3 -- K3?

24 MR. KRAUS: I think we're on K3. For  
25 consistency with trust-funded contract

1     refunds, the seller may include a contract  
2     provision allowing it to regain accrued  
3     interest. In the absence of such language,  
4     regulation may be needed to govern the  
5     parties' rights to interest -- well, that's  
6     what we were just talking about. Bill, do we  
7     need to talk any more on that? All right.  
8     K4, a purchaser has signed policy to new party  
9     instead of canceling.

10           MS. RUSSELL: If we're on the K4 which  
11     is this -- about the insurance funded; is that  
12     where we were?

13           MR. KRAUS: Yes.

14           MS. RUSSELL: You're talking about the  
15     preneed contract, not the policy, so that's  
16     not an issue regarding this. We're talking  
17     about the preneed contract, so you can't --  
18     you know, you're talking about assigning a  
19     policy.

20           MR. KRAUS: It's a different issue.

21           MS. RUSSELL: It's a different issue,  
22     yes. So, the answer to that, in my opinion,  
23     would be no.

24           MR. OTTO: And this is Don Otto.  
25     Ignore my K4 comment on my sheet. I was -- I

1       couldn't read the dotted line, so --

2               MR. KRAUS:   Okay.   We're moving on to  
3       K5?

4               MR. WARREN:   Mark Warren.

5               CHAIRMAN:   Yes.

6               MR. WARREN:   On the comment in K4, may  
7       a purchaser assign a policy, are we talking  
8       about the insurance policies?

9               MR. KRAUS:   I think so, yeah.

10              MS. RUSSELL:   We just said that it's a  
11       contract, not a policy.

12              MR. WARREN:   All right.   The preneed  
13       contract?

14              MS. RUSSELL:   Yeah.   That has nothing  
15       to do with the insurance policy.   Yeah.

16              MR. WARREN:   All right.   That's -- all  
17       right.   I got you.

18              MR. MAHN:   So, should it say preneed  
19       contract instead of policy?

20              MR. KRAUS:   No.   I think the question  
21       was -- I think where the comment was going was  
22       apart from cancellation, can someone just  
23       assign the insurance policy to someone else?  
24       I mean, like, a more global question.

25              CHAIRMAN:   Meaning the preneed --

1           MR. MAHN: Or the insurance contract  
2 or the preneed contract? They're two  
3 different things.

4           MR. KRAUS: I think the underlying --  
5 the insurance contract, I think is what we're  
6 talking about.

7           MR. MAHN: She's saying a preneed  
8 contract.

9           MS. RUSSELL: Insurance policy and the  
10 preneed insurance contract are two separate  
11 things. An insurance policy on cancellations  
12 and stuff is governed by the Department of  
13 Insurance on that. That's why you have it  
14 like this. So, the answer on can you cancel,  
15 does it have any effect on the policy is why  
16 they put this rule in there. You understand  
17 what I'm saying; right, Earl?

18          MR. KRAUS: I think so.

19          MS. RUSSELL: (Inaudible.)

20          CHAIRMAN: So, your thought is there  
21 is no reason for it. There is no need; right?

22          MR. KRAUS: It's a different thing.

23          MS. RUSSELL: You can cancel the  
24 insurance preneed contract, but it does not go  
25 and affect the insurance policy.

1 MR. KRAUS: Because that's a separate  
2 contract.

3 MS. RUSSELL: It's a separate --

4 MR. KRAUS: It's a different matter, a  
5 different regulator.

6 MS. RUSSELL: Exactly.

7 MR. KRAUS: Different rules.

8 MS. RUSSELL: Different regulations  
9 come into play within the cancellation of an  
10 insurance policy.

11 MR. WARREN: It's freestanding.

12 MR. KRAUS: Right.

13 CHAIRMAN: Okay.

14 MR. WARREN: But as far as assignment,  
15 you can't assign it during the policy --  
16 (inaudible.)

17 MS. RUSSELL: Oh, sure. Yes.

18 CHAIRMAN: Sure.

19 MR. WARREN: In fact, I don't think  
20 that needs to be addressed in the rule. It's  
21 just up to, you know, it happens quite often  
22 with funeral homes, the policy will be  
23 assigned to the home or whomever.

24 MR. KRAUS: And if we were going to do  
25 some kind of rule, we would be stepping on

1 insurance's toes, too.

2 MS. RUSSELL: Exactly.

3 MR. WARREN: Yeah.

4 MR. KRAUS: Okay.

5 CHAIRMAN: Okay. All right.

6 Everybody okay with that? We need to go on.

7 All right.

8 MR. KRAUS: All right. K5, reference  
9 to 100 percent of the trust property is  
10 confusing. Who must bear the risk of the  
11 account value or think the intent would be to  
12 refund -- a refund of payments less the  
13 origination fee.

14 MR. WARREN: I tend to agree with Don  
15 Otto's comment. You know, I don't think it's  
16 fair that you investment money towards a  
17 trust, you pay in 100 bucks at the time you  
18 contract -- (inaudible) -- where if you held  
19 the policy or -- excuse me -- the contract, 20  
20 years later, the value of that being \$200. I  
21 just don't see that as fair. And it also  
22 raises issues as time of contract and value of  
23 the trust account contract, that particular  
24 little portion of the trust.

25 CHAIRMAN: Okay. Further comments?

1           MR. STALTER: Well, if I may, I was  
2 just trying to figure out, are we talking  
3 about value or 100 percent of the trust or --  
4 I understand your position and I think that --  
5 I'm just asking, okay, are we -- if we just  
6 transfer the -- what's ever in that trust, is  
7 that what we're talking about? Because the  
8 problem here is that if it is how it was, you  
9 know, in the past, an amount equal to, you  
10 know, until the trust earns enough money,  
11 basically, the seller has exposure for that 10  
12 percent that didn't go into trust. That's --  
13 you know, you're making the seller a kind of  
14 guarantor of that 10 percent that's due back  
15 on the cancellation until the trust earns  
16 enough money.

17           MR. OTTO: Don Otto. I think that was  
18 clearly the intent of the legislators to make  
19 the seller be at risk of that 10 percent.

20           MR. STALTER: Okay.

21           MR. KRAUS: Until they can draw that 10  
22 percent, or what do you mean?

23           MR. OTTO: Yeah. Until -- well, I  
24 mean, in a cancellation, you give that 10  
25 percent back to the consumer, period.

1           MR. KRAUS: Right. You just mean that  
2 the 10 percent that's sitting there because  
3 the seller hasn't drawn that 10 percent yet?

4           MR. OTTO: No. If the consumer has,  
5 you know, paid -- they're paying \$100 a month  
6 on a \$10,000 contract, and so, you would get  
7 \$500 -- you get \$1,500 as your 15 percent.  
8 Five hundred of it is yours forever. That's  
9 the origination fee. The other 10 percent  
10 you've got to give back to the consumer, and  
11 you may have to reach into your pocket and  
12 pull it out. But the analogy was similar to  
13 insurance charge-back where an insurance agent  
14 sometimes has to reach into their pocket.  
15 It's not really analogous, but that was the  
16 concept. Or an insurance agent sometimes has  
17 to reach in his pocket to pay back commissions  
18 because the consumer has canceled. I mean,  
19 you may not like it as a seller or a funeral  
20 home, but that was pretty -- I think that's  
21 pretty clear that you've got to give that  
22 money back to the consumer.

23           CHAIRMAN: So, are you on track for  
24 that?

25           MR. KRAUS: Yeah, I am.



1 CHAIRMAN: All right. Comments?

2 MR. KRAUS: So, we are not doing any  
3 rule on that because we all know what it is,  
4 or we are?

5 MR. MAHN: I think we ought to  
6 highlight certain things in this and then get  
7 Senator Scott and Representative Wasson over  
8 here to explain their interpretation of the  
9 funeral industry and we could explain our  
10 interpretation of public offices because they,  
11 obviously, had somebody do it here, but I'm  
12 scratching my head a little bit.

13 CHAIRMAN: I understand. Go ahead,  
14 Brad.

15 MR. SPEAKS: Brad Speaks. I think Don  
16 is right that that was the intent of the  
17 legislature; however, that is not what this  
18 says, I don't think. Trustees shall  
19 distribute 100 percent of the trust property.  
20 Money has left in the trust, it's no longer  
21 trust property.

22 MR. KRAUS: Oh. But it does say  
23 including any percentage of the total payments  
24 received on the trust-funded contract that  
25 have been withdrawn from the account.

1 MR. SPEAKS: Okay. I didn't read that.

2 MR. KRAUS: So, yeah. That's what I  
3 was looking at first, too.

4 MR. OTTO: And that is the 10-percent  
5 provision is what that's referencing.

6 MR. KRAUS: You give that up, also.

7 MR. SPEAKS: Okay. Never mind.

8 MR. MAHN: I'd almost take that as the  
9 5 percent, too.

10 MR. OTTO: No. That was talked about.  
11 The 5 percent is yours forever.

12 MR. MAHN: It doesn't say that.

13 MR. KRAUS: But the 5 percent does go  
14 into the trust and then it comes back out.

15 MR. MAHN: Yeah. And it says 100  
16 percent.

17 MR. SPEAKS: That's the trust's  
18 property.

19 MR. KRAUS: Now, unless the 5 percent  
20 is not under the .4.

21 MR. OTTO: It's not under the .4.

22 MR. STALTER: It's not. It's -- yeah.

23 MR. KRAUS: Well, then there's the  
24 answer.

25 MR. SPEAKS: Okay.

1 MR. OTTO: It's not under the .4.  
2 It's point something else.

3 MR. KRAUS: Three or five or something.

4 MR. MAHN: Oh, of course, it is.

5 MR. KRAUS: Well, then there you go.  
6 All right. Everybody happy?

7 MS. RUSSELL: So, are you going to do  
8 a rule on this?

9 MR. KRAUS: I haven't heard that we  
10 are.

11 MR. REINHARD: No, we're not.

12 MS. RUSSELL: Oh, wow. I just heard a  
13 big discussion and everybody had different  
14 opinions. I can't imagine --

15 MR. KRAUS: I'm happy to do one, I just  
16 haven't heard that yet.

17 MS. RUSSELL: Poor Becky.

18 CHAIRMAN: So, do you guys want to  
19 give him some walking orders.

20 MR. KRAUS: I can only do what I'm  
21 instructed to do.

22 MR. MAHN: Well, I went far before and  
23 got the guillotine. I say 95 percent of it  
24 needs refunded to the family.

25 CHAIRMAN: Get your black hat on

1     there, Jim.

2             MR. MAHN:   That's the rule, you know.  
3     Simple as that.   Why things getting black and  
4     white.   Everything has got to be -- has to  
5     get interpreted, like we're in China or  
6     something.   (Inaudible.)

7             CHAIRMAN:   There's vote number one.

8             MR. MAHN:   Ninety-five percent needs  
9     to be refunded.   Cancellation.   (Inaudible.)

10            MR. FRAKER: I agree

11            CHAIRMAN:   So, there's two.   Give us  
12     the official, Jim.

13            (Several people talking simultaneously.)

14            MR. REINHARD: I hate to lose.

15            MR. KRAUS:   Well, in the course of --  
16     you know, if we were to draft a rule on this,  
17     then we would have to be careful and not  
18     saying it that straightforward, although that  
19     won't encompass all scenarios.

20            MR. MAHN:   Right.   No.   There's  
21     nothing we don't want straightforward, and  
22     we've got to get room for the attorneys to be  
23     able to fight over something someday.

24            MR. KRAUS:   Well, because, I mean, if  
25     you say 95 percent, depending on what's gone

1 in, when it's come out. I mean, that -- we  
2 can always --

3 MR. MAHN: Right. You've got to have  
4 monkey words here and there.

5 CHAIRMAN: There's no need to go  
6 further. Write the rule.

7 MR. KRAUS: All right. 436.457, seller  
8 cancellation. K6, upon cancellation, 85  
9 percent of contract payments shall be refunded  
10 to the purchaser. Seller gets maximum 15  
11 percent of payments plus income, if any;  
12 right? That's what it sounds like. Any  
13 thoughts on that? Okay. All right. Going  
14 once, twice. Moving on.

15 MR. BROWNLEE: Excuse me. Are we  
16 moving past 457?

17 MR. KRAUS: That's what we're on right  
18 now.

19 MR. BROWNLEE: I had a note -- Richard  
20 Brownlee with Assurant. I had a note under  
21 page 6 that says if they're insured and they  
22 cancel, they get the cash-surrender value;  
23 does that make sense to those who know more  
24 about this than I?

25 MS. RUSSELL: This is just talking

1 about the trust and joint accounts, not  
2 talking about insurance-funded accounts.

3 MR. BROWNLEE: So, on seller  
4 cancellation, it makes -- it says --

5 MS. RUSSELL: But we're not talking  
6 about insurance funded.

7 MR. BROWNLEE: This is trust funded?

8 MS. RUSSELL: Trust and joint.

9 MR. OTTO: The first sentence, this is  
10 just on joint account and trust cancellations.

11 MR. BROWNLEE: That's what the whole  
12 section on 457 refers to?

13 MS. RUSSELL: Correct.

14 MR. OTTO: Right.

15 MS. RUSSELL: Just trust and joint, not  
16 insurance.

17 MR. BROWNLEE: No insurance here.

18 MR. KRAUS: Well, you know, that is --  
19 I mean, we could clarify that, though, because  
20 I think you're right that sub one refers to  
21 just trust and joint account, but these are  
22 all separately standing subsections.

23 UNIDENTIFIED: That's exactly right.

24 MR. STALTER: Well, but your issue  
25 here is who is the seller.

1 MS. RUSSELL: Exactly.

2 MR. STALTER: See, with your insurance

3 -- this is the issue you haven't even

4 addressed yet is, I mean, who is the seller

5 under the insurance-funded arrangement, so --

6 MR. SPEAKS: It won't be --

7 MR. KRAUS: Whoever the seller is.

8 MR. SPEAKS: Yeah. It would be the

9 seller here.

10 MS. RUSSELL: Yeah.

11 MR. SPEAKS: So, you really -- I think

12 this is pretty clear --

13 MS. RUSSELL: It's clear.

14 MR. SPEAKS: -- from a legal

15 standpoint.

16 MR. KRAUS: So, you're saying what,

17 again?

18 MR. STALTER: In other words, we're

19 talking about this is a cancellation by the

20 seller.

21 MR. KRAUS: Right.

22 MR. STALTER: So, we're contemplating

23 that a seller has trust-funding or

24 joint-account tracts, but who is the seller

25 with the insured contracts?

1 MR. KRAUS: Well, I think in that --  
2 with that funding mechanism, there would be a  
3 seller, and that person is the seller.

4 MR. STALTER: And that's where we --  
5 this issue has been kind of open for -- since  
6 the first meeting, I think, under 333, is how  
7 do we define who is the seller in the  
8 insurance-funded arrangement?

9 MR. WARREN: The seller, technically,  
10 is going to be the insurance company is the  
11 one who is, you know, issuing the policy. The  
12 seller could be a variety of people including  
13 someone who is totally outside the realm of  
14 preneed or the funeral business.

15 MR. KRAUS: And, of course, under the  
16 new provisions, they'd have to be a licensed  
17 seller, so then we know who the seller is.

18 MR. WARREN: Right. Right.

19 MR. KRAUS: And if someone is selling  
20 who is not a licensed seller, then they've got  
21 a problem.

22 MR. WARREN: But if you're talking  
23 about a seller canceling a trust fund or a  
24 joint account from his preneed contract, that  
25 wouldn't affect the insurance policy.



1 MR. STALTER: Yeah.

2 MR. KRAUS: That's right.

3 MS. RUSSELL: That's right.

4 MR. WARREN: So, I mean, to me, this  
5 is clear as to what it affects.

6 MS. RUSSELL: Exactly.

7 MR. WARREN: I mean, I don't seen any  
8 need for a rule, in my opinion.

9 MR. STALTER: You know, you can argue  
10 that you're -- really, we're talking about  
11 trust funded here, but when you talk about the  
12 85 percent, you know, that -- there's  
13 origination fee regardless whether it's joint  
14 or trust funded, so they can, you know,  
15 collect that 5, but the 10 percent is really a  
16 trust-funded issue. So, then, basically, this  
17 applies only to the trust-funded seller.

18 MR. KRAUS: Well, and that's where I  
19 was going is, is it necessary to say in a  
20 rule that this section does not regard  
21 insurance-funded contracts?

22 MR. MAHN: Or joint accounts.

23 MR. STALTER: Or joint, yeah.

24 MR. KRAUS: Well, of course, that --  
25 and in paren one, they do say joint account.

1 Seller may have the right to cancel a  
2 trust-funded or joint-account-funded preneed  
3 contract if.

4 MR. STALTER: Yeah. But you have a  
5 numbered paragraph. These are all numbered  
6 paragraphs so that, you know, one doesn't act  
7 as a binding on all the subs and so --

8 MR. KRAUS: Exactly. Exactly. So, no  
9 interest?

10 CHAIRMAN: Is it really going to be  
11 beneficial?

12 MR. KRAUS: I don't know. I'm just  
13 asking.

14 CHAIRMAN: I'm hearing split opinions.

15 MR. MAHN: Yes, I'd put it in there.  
16 But if you don't put it in there, then they'll  
17 just have some argument later on about it.

18 MR. REINHARD: Well, the only thing  
19 you need to clarify, like Bill said, if both  
20 of them have origination fees of 5 percent,  
21 then a trust gives back 85 percent; correct?  
22 We were saying 85 here. The joint account  
23 gives back 95.

24 MR. STALTER: That would be right. I  
25 mean, that's like -- yeah.

1 MR. REINHARD: So, you know, you need  
2 to -- if you're going to write a rule,  
3 encompass both of them and then it's clear.

4 MR. MAHN: Right.

5 CHAIRMAN: Gary, you're the deciding  
6 factor.

7 MR. FRAKER: Well, it needs to be  
8 clarified.

9 CHAIRMAN: Okay. Unanimous.

10 MR. REINHARD: Well, a bank's trust  
11 canceling out, you're going to have to be  
12 going to joint accounts. There are going to  
13 be a lot of people in joint accounts.

14 MR. KRAUS: All right. 458.

15 MR. REINHARD: Well, do we write a  
16 rule or not?

17 MR. KRAUS: Yeah, we did. It's done;  
18 I just wrote it. But we're moving on. K7.  
19 Purchase or change of provider. This customer  
20 selects a different provider, the seller has  
21 the option to either establish a trust where  
22 the new provider receives credit for all  
23 principal or pay principal and income to the  
24 new provider.

25 MR. MAHN: I think if they select a new

1 provider, the principal and income ought to go  
2 along with the prearranged funeral. Isn't  
3 that the question? Is that the question?  
4 That's how I'm reading the question, isn't it?

5 MR. KRAUS: Yeah. Whether they can  
6 just pay the money or establish --

7 MR. MAHN: A new trust?

8 MR. KRAUS: -- or change the trust.

9 MR. MAHN: Either the old trust pays  
10 the, you know, the new provider the full  
11 amount plus all of the interest.

12 MR. KRAUS: And let them set up the  
13 trust, I assume?

14 MR. MAHN: Or wait till time of death  
15 and pay the funeral bill, all the interest; is  
16 that what you're saying?

17 MR. FRAKER: By the whole thing.

18 MR. KRAUS: Well, I would assume that  
19 they would do one or the other at the time of  
20 the change of the provider.

21 MR. MAHN: You're talking about a  
22 purchaser change in provider before time of  
23 death, is what I'm asking.

24 MR. KRAUS: Right.

25 MR. MAHN: And should the whole amount

1 plus the interest or principal go with the  
2 trust; is that what you're saying? Is that  
3 what this says?

4 MR. KRAUS: I think that's the  
5 question.

6 MR. MAHN: I think we need to be real  
7 clear on that.

8 MR. OTTO: Yeah. This is -- you're  
9 right. This is -- here was what was the  
10 concern, is your funeral home is also a  
11 seller. And you have a lot of fiduciary  
12 obligations because you're a seller. Now, the  
13 consumer is changing to your competitor across  
14 the street. You don't want to be stuck to be  
15 forced to be in a contractual relationship  
16 where you owe fiduciary relationships and  
17 obligations to your competitor across the  
18 street. So, that gives the seller an option.  
19 If the seller doesn't mind the new provider,  
20 you replace the old -- the new provider with  
21 the old provider. If you don't like the new  
22 provider -- for example, with MFT, I use the  
23 example of Warren Funeral Chapel. If somebody  
24 had wanted -- I didn't want to do business  
25 with them. I shouldn't be forced to do

1 business with somebody I don't like. So, then  
2 you have option two as the seller is just  
3 write a check.

4 MR. MAHN: Well, no competitor is  
5 going to like their competitor.

6 MR. OTTO: Yeah. Yeah.

7 MR. MAHN: So, if the family had an  
8 issue with your funeral home -- (Inaudible.)

9 MR. OTTO: Yeah. You want to wash  
10 your hands of it.

11 MR. MAHN: Well, they should be able  
12 to go down the street.

13 MR. OTTO: Yeah. They should. They  
14 should.

15 MR. MAHN: (Inaudible.)

16 MR. OTTO: But you, as a seller, don't  
17 want to be stuck, for example, having to do  
18 reporting requirements to your competitor.

19 MR. MAHN: Well, I don't think this  
20 says that.

21 MR. OTTO: Well, if it didn't say  
22 that, that would be a problem if it didn't  
23 have it this way. So, the seller has the  
24 option of just continuing the trust with new  
25 provider taking the place of old provider, or,

1 if I don't like new provider for whatever  
2 reason, I can write new provider a check.  
3 Now, where the confusion is and where a rule  
4 -- I know you're going to get into problems  
5 and where you might want a rule is the 15  
6 percent. And if you take a look at my  
7 comments, the way I read this rule, this  
8 statute, funeral home B gets whatever the  
9 provider should have gotten. Well, the 15  
10 percent belongs to the seller, not the  
11 provider. So -- and the way this is worded,  
12 again, it says the newly designated provider  
13 gets all payments owed to the original  
14 provider under the contract. And then in  
15 paragraph 3, option 1, shall either continue  
16 the trust with the new provider in place of to  
17 receive all payments owed the original  
18 provider, or pay the new provider the trust  
19 property. Again, this could have been worded  
20 better, and we tried, but I believe the upshot  
21 of this is funeral home B gets the 85 percent  
22 plus all the interest because the first  
23 funeral home gets to keep their 15 percent.  
24 And that was intentional because, otherwise,  
25 funeral home B is getting the advantage of

1 funeral home A paying the salespeople to go  
2 out and sell this. So, if you want to change  
3 providers, funeral home B, either option 1 or  
4 option 2, winds up getting 85 percent plus  
5 interest because the interest does go with it.  
6 But that first funeral home or first seller  
7 gets benefit for I'm the one that pays the  
8 commissions; I'm the one that had the  
9 building; I'm the one who did all this stuff.  
10 And that was what they -- the intent. It was  
11 not to reward -- you know, otherwise, the  
12 funeral home might just put an ad in the paper  
13 saying, you know, \$500 if you transfer your  
14 funeral to me. I'm going to let all my  
15 competitors pay their salesmen and I'm just  
16 going to take it all.

17 MR. KRAUS: Yeah. But wasn't there  
18 also discussion about intent towards  
19 100-percent portability?

20 MR. OTTO: What?

21 MR. KRAUS: Wasn't there also intent  
22 towards achieving 100-percent portability  
23 without penalty on the consumer?

24 MR. OTTO: Well, there is no penalty  
25 to the consumer, but funeral home B, in any



1 case -- you know, if ever you're changing  
2 funeral homes, the second funeral home has to  
3 accept it. It has to be willing to do the  
4 deal.

5 MR. KRAUS: Right.

6 MR. OTTO: And this deal is, you get 85  
7 percent plus the interest. Now, a savvy --  
8 there's -- we brought this up and we could  
9 never get Charlie to word this better. But  
10 there's an interesting calculation that needs  
11 to be made if the consumer wants to change the  
12 funeral home.

13 MR. MAHN: Okay. So, do they cancel  
14 it at 95 --

15 MR. OTTO: Is it better to cancel, 95  
16 and no interest?

17 MR. MAHN: -- percent or 85 percent  
18 with interest?

19 MR. OTTO: Or is it better to transfer  
20 at 85 and interest?

21 MR. MAHN: Sure. So, they're going to  
22 be calculating.

23 MR. OTTO: So, they've got to  
24 calculate it.

25 MR. MAHN: That's right.

1           MR. OTTO: A good rule here, however  
2           -- a very good rule would be to make it clear  
3           that funeral home B has to accept this deal,  
4           you know. Is bound by the original contracts.  
5           And something that makes it clear that the  
6           seller, if they take option B and just write a  
7           check, that the seller and trustee are done  
8           with it now for the future, but that doesn't  
9           obligate them of any malfeasance they've done  
10          before they transferred the money. That might  
11          be good to clear up because you don't want  
12          somebody trying to say, oh, I transferred  
13          this, I'm not responsible. Well, the problem  
14          happened while you were in control of the  
15          money.

16          MR. KRAUS: Yeah. They mismanaged the  
17          funds at the time.

18          MR. OTTO: Yeah. Yeah. You don't want  
19          somebody to try to sneak out on that. But,  
20          on the other hand, after I write the check --  
21          I took option B, I wrote the check, the money  
22          is out of my trust, it's not my problem  
23          anymore. That's the new trust's problem.

24          MR. KRAUS: How could it be their  
25          problem?

1           MR. OTTO: I know. I just -- it  
2 shouldn't be, but I didn't know -- I thought  
3 that would be a nice --

4           MR. REINHARD: He wants to clarify  
5 that it's not their problem.

6           MR. OTTO: I want to make it clear  
7 it's not my problem.

8           MR. MAHN: Trust A's problem, you mean?

9           MR. OTTO: Yes. It's not Trust A's  
10 problem after the transfer, but they're  
11 responsible for what they did before the  
12 transfer.

13          CHAIRMAN: Any other comments?

14          MR. MAHN: Well, it might be cleaner  
15 just to match them both up and say 95 percent  
16 when you cancel it or you transfer it, 95  
17 percent plus the interest goes to funeral home  
18 B.

19          MR. FRAKER: That would be great.

20          CHAIRMAN: Is anyone against that  
21 thought?

22          MR. FRAKER: Well, I think that's good.

23          UNIDENTIFIED: What?

24          CHAIRMAN: I just said anyone against  
25 that thought.

1           MR. OTTO: I just -- we didn't hear  
2 what the thought was.

3           UNIDENTIFIED: We didn't hear what you  
4 said.

5           MR. MAHN: So, why not match them both  
6 up and 95 percent plus the interest, whether  
7 it's cancellation or transfer, goes to funeral  
8 home B?

9           MR. OTTO: Because that would go  
10 beyond what the statute requires for change of  
11 providers. That would have been nice if they  
12 matched up.

13          MR. MAHN: Yeah.

14          MR. OTTO: But the statute doesn't  
15 match them up.

16          MR. MAHN: Well, can't we match it up  
17 for them?

18          CHAIRMAN: Do what?

19          MR. OTTO: And the regulation can't go  
20 beyond what the statute requires, obviously.  
21 And I think the statute only requires 85  
22 percent to go. And that was really on  
23 purpose, again, to try to stop funeral home B  
24 from benefiting from funeral home A's work.

25          MR. MAHN: Oh, of course, it does.

1           MR. OTTO: But it does create a weird  
2 situation where it might be better to cancel  
3 than transfer in some cases.

4           MR. MAHN: Either way, portability of  
5 trusts still stands.

6           MR. REINHARD: Write that in the rule.

7           MR. MAHN: Yeah. Write that in a rule.

8           MR. REINHARD: And put that in the  
9 contract.

10          MR. MAHN: Tell them thank you for all  
11 last year, but -- anyway. Okay.

12          MR. KRAUS: That goes beyond the scope  
13 of the statute.

14          MR. MAHN: I'll write that letter.  
15 I've got my first letter in the mail for a  
16 donation last week.

17          MR. REINHARD: You're not sending any,  
18 are you?

19          CHAIRMAN: Do you know what your --

20          MR. KRAUS: Yeah. We're going to  
21 clarify that as best we can.

22          MR. FRAKER: I still think that's what  
23 they intended. (Inaudible.)

24                (Several people talking simultaneously.)

25          MR. REINHARD: Can you write

1 something, Earl, and get back to us, and then  
2 we'll look at it, because I think we're going  
3 to spend the rest of the afternoon. We're  
4 going to have to call a cab and say leave the  
5 governor's casket open another hour.

6 MR. KRAUS: Yeah. We'll want to talk  
7 about it again when we have a draft.

8 MR. OTTO: Thank you very much. I  
9 really appreciate all this. I have to go  
10 teach the class because we've got people that  
11 want to get the class in before the law  
12 changes. The reason the comments didn't come  
13 in from us till 1:25 in the morning is because  
14 my comments are in response to what you did,  
15 and I didn't get those till last night.

16 MR. MAHN: We won't miss you. You're  
17 leaving the boss here anyway.

18 MR. OTTO: I know. She's in charge.  
19 She can handle it, but thank you very much.  
20 I appreciate it.

21 MR. REINHARD: Thank you.

22 CHAIRMAN: So, K8; is that where we're  
23 at?

24 MR. KRAUS: Unless we covered those in  
25 the discussion. I think we've talked about --

1 I'm certain we haven't hit on notice in K9.

2 MR. MAHN: The two don't match up, do  
3 they? Cancellation or transfer just doesn't  
4 match up.

5 MR. STALTER: No.

6 MR. MAHN: And it should have.

7 MR. FRAKER: I think they intended for  
8 that to match. I really do.

9 MR. MAHN: No. I think they intended  
10 for it not to.

11 MR. STALTER: There's a gap there. I  
12 mean, there is.

13 CHAIRMAN: But it's there, and what  
14 can we do about it?

15 MR. MAHN: We can't do anything about  
16 the gap, can we?

17 MR. KRAUS: I think they looked at  
18 them as different things. You know, canceling  
19 is one thing and transferring is something  
20 else.

21 CHAIRMAN: Sure.

22 MR. KRAUS: But it's set up how it's  
23 set up.

24 MR. MAHN: But Don is right. Families  
25 or the funeral directors are sitting down with

1       -- we'll sit down and try to calculate when  
2       the family comes in to see you that wants to  
3       move it. Well, should you -- and you can't  
4       go back and cancel it with them or transfer it.

5               MR. KRAUS: They'll try to steer them  
6       one way or the other. Sure.

7               MR. MAHN: We're going to try to --  
8       right.

9               MR. KRAUS: But what are you going to  
10      do?

11              MR. MAHN: Well, nothing. I just  
12      wanted to make that comment.

13              MR. KRAUS: Okay.

14              MR. REINHARD: Do you feel better now.

15              MR. MAHN: Oh, I feel real good.

16              MR. REINHARD: Okay.

17              MR. KRAUS: All right. What counts as  
18      notice to the seller? I guess this -- what  
19      should be the -- upon written notice. I think  
20      we've been setting out most of those things in  
21      rule as to --

22              MR. MAHN: On a scratch pad.

23              CHAIRMAN: Same as the other one was,  
24      wasn't it?

25              MR. KRAUS: Yeah.



1           CHAIRMAN:   Okay.

2           MR. MAHN:   Can that say on a scratch  
3           pad, Earl?

4           MR. KRAUS:   To drop them off a Post-It  
5           note?

6           MR. MAHN:   Yeah.   The funeral home's  
7           letterhead.

8           CHAIRMAN:   We're saying K9 is just  
9           like the previous one, so we're just going on.  
10          K10?

11          MR. KRAUS:   Right.   Okay.   Alternative  
12          provider elects to transfer the trust, it  
13          should receive a trust value as opposed to  
14          payments plus income.   These transfers could  
15          take time to effect.   I think that kind of  
16          relates to our other discussion.

17          MR. MAHN:   Yeah.   They're all  
18          commingled.

19          MR. KRAUS:   Right.   Anything else on  
20          458?   Okay.   436.460.   Seller annual reports.  
21          K11, may want to require by rule that a Board  
22          form be used for the annual report.   I think  
23          we probably do want to do that, don't we?

24          CHAIRMAN:   Anyone against that?

25          MR. MAHN:   No.

1           CHAIRMAN:   Becky?

2           MS. DUNN:   Yes.   A Board form.

3           MR. REINHARD:  Oh, yeah.

4           MR. KRAUS:   For the annual report.

5   Otherwise, you're going to get everything and  
6   anything.

7           MR. REINHARD:  You'd get some sticky  
8   notes.

9           MR. KRAUS:   There's a note stuck on  
10   there, too, that's towards not -- I've seen  
11   some forms promulgated as rules themselves,  
12   but then any time you need to make any kind  
13   of change to the form, you've got to go in  
14   and repromulgate a rule to change the form,  
15   and you don't want to do that.

16          CHAIRMAN:   Correct.

17          MR. KRAUS:   Just make the form, it's a  
18   form, it's not a rule.   But then to the  
19   extent you want to specify what the provisions  
20   -- what the requirements are in the section as  
21   to what's required on the annual report, you  
22   may want rules saying the contract amount  
23   means whatever you think it should mean.   And  
24   I have some different highlighted items here  
25   that maybe you would want to consider defining

1 by rule. For example --

2 CHAIRMAN: Didn't we do that,  
3 definition section? That's basically --

4 MR. KRAUS: We did a similar thing in  
5 the definition section.

6 CHAIRMAN: With, like, the bullet  
7 points, meaning --

8 MS. DUNN: Well, we have a definition  
9 section that defines what something may mean,  
10 like in 333, embalmer.

11 CHAIRMAN: Uh-huh. Right. Right.

12 MS. DUNN: So, do you want to further  
13 define some of the highlighted items that he  
14 has --

15 CHAIRMAN: I guess I was thinking more  
16 of the list when I said bullet points, of what  
17 are those things, but they could be both.

18 MR. KRAUS: Yeah. Like the list, what  
19 does that mean?

20 CHAIRMAN: Anyone against them  
21 creating or at least something for us to look  
22 at that would define further those items that  
23 are to be there and maybe specifically what  
24 those items are?

25 MR. REINHARD: Like on the contract?

1 For the report? What are you --

2 CHAIRMAN: We're talking about the  
3 report.

4 MR. KRAUS: The seller annual report,  
5 there are -- there's a description here of a  
6 number of items that have to be included in  
7 the annual report, which you can either leave  
8 as is as those are the requirements. Or if  
9 you think some of these need clarification for  
10 the Board and for people who are trying to  
11 comply, then we could, in rule, explain  
12 further what some of these things are.

13 MR. REINHARD: Well, if we can explain  
14 further to simplify it, let's explain further  
15 to simplify it. I suppose you're against that.

16 CHAIRMAN: No. He said do it.

17 MR. REINHARD: Oh. You said do it.

18 (Inaudible.)

19 MR. MAHN: I knew you weren't getting  
20 your two cents in.

21 CHAIRMAN: Okay. That's a yes.

22 MR. KRAUS: All right. Let me see if  
23 there's anything additional in here. I assume  
24 the same would apply with regard to written  
25 consent, written consent as to what comprises

1       those.

2               MS. DUNN:   Yes.

3               MR. KRAUS:   Okay.

4               MS. DUNN:   Any opposition?

5               CHAIRMAN:   Oh.   We need to know that?

6               MS. DUNN:   Well, Earl is asking.

7               CHAIRMAN:   What's the question then?

8       Written -- I heard written consent, written  
9       consent.

10              MR. KRAUS:   Written consent.   I assume  
11       you want us to also set out what comprises  
12       written consent?   Like, it has to be signed by  
13       the person, it has to be dated, stuff like  
14       that?

15              MR. MAHN:    Yeah.

16              MS. DUNN:    Just simplify it.

17              MR. KRAUS:    Yeah.

18              CHAIRMAN:    Everybody in favor of that?  
19       Yeah.

20              MR. MAHN:    Say yes.

21              MR. REINHARD:  Absolutely.   Anything  
22       to make it easier.

23              MR. KRAUS:    All right.   Does anyone  
24       have any thoughts, like, if we define, like in  
25       sub 9, written consent authorizing the Board

1 to order an investigation, examination, or an  
2 audit. I don't know that investigation,  
3 examination, or audit need further definition,  
4 but if you wanted to, we could as to what an  
5 investigation is, what an examination is, what  
6 an audit is.

7 CHAIRMAN: Anyone against them  
8 defining that?

9 MR. MAHN: No.

10 MR. REINHARD: Because we can always  
11 throw it out.

12 MR. MAHN: Yeah.

13 CHAIRMAN: True. Absolutely. Yes,  
14 ma'am?

15 MS. SUMMERVILLE: Kalene Summerville.  
16 I just noticed that Don has said that defining  
17 too far may cause more problems and restrict  
18 what we can do.

19 MR. KRAUS: They can.

20 MS. SUMMERVILLE: You might be careful  
21 on how far you take that.

22 MR. KRAUS: Sometimes you can bind  
23 yourself in by saying an audit is these  
24 things, and if that's all inclusive and then  
25 you want to do something else that you think

1 is an audit, well, it's not in your rule as  
2 an audit, so you can't.

3 MS. DUNN: Or at a minimum, some  
4 language that would say at a minimum to be or  
5 --

6 MR. MAHN: Can we put down things we  
7 think it is and then put underneath it all the  
8 above.

9 (Several people talking simultaneously.)

10 CHAIRMAN: Mark?

11 MR. WARREN: You know, the way I look  
12 at it is put a rule out there that says I got  
13 to do stuff other than what's in this law, I  
14 don't agree with that. This defines what I  
15 have to provide, and I could make a real good  
16 argument on I don't have to do anything else.  
17 It's statutory.

18 CHAIRMAN: Any other comments? Well,  
19 I think the goal of the Board is to make this  
20 as somewhat as easily as possible to try to  
21 avoid problems, obviously.

22 MR. KRAUS: So, we're going to  
23 clarify, but not add requirements; right?

24 MR. MAHN: Correct.

25 CHAIRMAN: All heads are nodding.

1       Okay.

2               MR. KRAUS:   The next page.   K18, we've  
3       got the name and address of financial  
4       institution.   Comment was require the name of  
5       the trust officer, specifically.

6               CHAIRMAN:   Why would that be  
7       beneficial?

8               MR. KRAUS:   So you have a person to  
9       get ahold of instead of an institution.

10              CHAIRMAN:   What if he doesn't work  
11       there anymore?   So, wouldn't it need to be  
12       both, or for sure --

13              MR. KRAUS:   Well, the financial  
14       institution is already required by statute.

15              CHAIRMAN:   Okay.   You're just wanting  
16       to add --

17              MR. KRAUS:   Whether that's a more  
18       specific contact within that financial  
19       institution.

20              CHAIRMAN:   Yes, ma'am?

21              MS. SUMMERVILLE:   This is Kalene  
22       Summerville.   Also, Don had mentioned that  
23       this adds a requirement that's not already in  
24       the statute by adding the person's -- the  
25       trust officer's name.   I don't know if that's



1 a big deal or --

2 CHAIRMAN: Couldn't we just, you know,  
3 like we were asking on the corporations for  
4 just a contact person that was involved or  
5 something? That's probably too simplified,  
6 but you know what I'm saying?

7 MR. KRAUS: I think you can. I mean, I  
8 honestly think you could ask for the trust  
9 officer within that financial institution, so  
10 you are asking for someone who you can contact  
11 there now. Is that going beyond the statute?  
12 Depending on how you say that, it could. You  
13 can certainly ask for an individual contact.  
14 I don't see that being outside of the  
15 financial institution because how do you  
16 contact any business? You contact a person.

17 CHAIRMAN: Sure. Anyone against the  
18 thought of them looking toward that thought?

19 MR. REINHARD: No.

20 MR. MAHN: No.

21 CHAIRMAN: Go for it.

22 MR. KRAUS: All right. Some more  
23 highlighted terms which I assume we'll do like  
24 we did in the first page. Let's try to  
25 clarify those to the extent we can and then

1       you can look at what draft we come up with  
2       and see if you like it.

3               CHAIRMAN:   Works for me.

4               MR. KRAUS:   All right.   Principal  
5       contributions received by the trustee since the  
6       previous report, K20, grand total or individual  
7       amounts.   Every individual contribution  
8       regardless of amount; right?   I think that's  
9       also clarifying what those terms mean.   I'm  
10      assuming that the Board wants more than just a  
11      total there.   That would make some sense to  
12      me, but we'll put that in the draft and bring  
13      it back.

14              MR. FRAKER:   I have a question.   I keep  
15      thinking about some things we talked about  
16      earlier about are we starting this at ground  
17      zero again?   In other words, all this stuff  
18      here starts over irregardless of what's gone  
19      on before.   We can't go back and change  
20      anything that's already there; is that right?  
21      Am I looking at this right?   Do you understand  
22      what I'm asking?

23              MR. KRAUS:   Not exactly.

24              MR. REINHARD:   You're saying, like,  
25      any of the contracts or anything before the

1 August 28th? We can go back and examine them,  
2 but we can't go back and change them. I mean  
3 --

4 MR. KRAUS: What do you mean by change  
5 them?

6 MR. REINHARD: Well, I mean, is he  
7 saying, like -- are you talking about, like,  
8 people going back and having people sign new  
9 contracts so they would be up to date with --

10 MR. FRAKER: We're not even thinking  
11 about that, are we?

12 (Numerous people answer no.)

13 MR. KRAUS: No. The contracts that  
14 are in place are in place and they're valid  
15 contracts.

16 MR. REINHARD: Right. You don't have  
17 to go back and have them rewritten.

18 MS. RUSSELL: No.

19 MR. MAHN: Or white them out.

20 MR. KRAUS: Now, if you go -- let's  
21 say you want to open a contract back up again  
22 and, basically, enter into a new contract with  
23 someone to replace an old contract, then that  
24 would have -- if that's done after August  
25 28th, it would have to comply with these

1 requirements. But that's the same as really  
2 doing a new contract. You don't have to --  
3 you know, you don't have to go back in and  
4 make changes to all the old ones.

5 MR. REINHARD: Because some of these  
6 people may think that you have to do that. I  
7 don't know.

8 MR. KRAUS: You're certainly not  
9 prohibited from doing that if they want to.

10 MR. REINHARD: What do you think,  
11 Darlene? There would be some of those small  
12 funeral homes that would think you would have  
13 to go back?

14 MS. RUSSELL: Well, some are going  
15 back just because they know what they've got  
16 on record right now doesn't even meet the old  
17 436. So, no. You're right. I think you've  
18 made that pretty clear. Everyone that's got  
19 any common sense knows it's on a go-forward  
20 basis. August 28th, you know, your contract  
21 has to say that. You don't have to go back  
22 to those old contracts.

23 MS. NEUMANN: That's what we're  
24 telling people in their e-mails.

25 MS. RUSSELL: Yeah.

1 MS. NEUMANN: When they contact us for  
2 information, I tell them starting August 28th,  
3 those new laws go into effect. Before August  
4 28th, those laws are the old laws. You have  
5 to go into the new ones -- the new contracts.  
6 They know that they're not obligated to renew  
7 all the old ones.

8 (Reinhard and Mahn speaking  
9 simultaneously.)

10 (Several people talking simultaneously.)

11 CHAIRMAN: Well, this is actually  
12 referring to the reporting of contracts. And,  
13 like, in principal contribution and current  
14 face amount and all of those things, that is  
15 on the going-forward basis. I mean, I  
16 received \$500 this year from Mrs. Jones'  
17 contract that I already reported on my annual  
18 report two years ago, and I just reported the  
19 face amount. I'm not going to have to show  
20 that. How would I show that? That wouldn't  
21 make sense with any going-forward number.

22 MR. KRAUS: Well, we did talk about  
23 previously how we're going to address the  
24 initial reporting period after the law goes  
25 into effect. But then this will be something

1     that you'll want to talk about as to going  
2     forward past that for the next reporting  
3     period, how folks are to comply with these  
4     things. Now, that doesn't need to be an  
5     emergency rule because that's not until way  
6     down the road, but we're going to likely need  
7     to be in just a regular rule how people are  
8     to report things that are required under their  
9     new contracts they've entered into since  
10    August 28th and the contracts that they had  
11    before that time, because the information that  
12    they have available is going to be different  
13    because the contracts are different, I would  
14    think; right?

15           UNIDENTIFIED: (Inaudible.)

16           MR. FRAKER: So, we're going to make  
17    everyone that has -- from August the 28th on  
18    that buys a preneed agreement that is put in  
19    trust, we're going to make every funeral home  
20    change their bookkeeping and saying you've got  
21    to keep track of each individual account, how  
22    much interest has been made, rather than  
23    keeping it in a separate, you know, account  
24    that would be virtually impossible to  
25    determine how much interest was made?

1           CHAIRMAN: We're not going to make it.  
2       This is what --

3           MR. KRAUS: Well, that's kind of a  
4       loaded question, but I think they will  
5       certainly need to put in place whatever  
6       processes they need to put in place to comply  
7       with the statutory requirements for reporting.  
8       Once we get to that regular annual reporting,  
9       which, again, will be a ways from now.

10           (Several people talking simultaneously.)

11           MR. KRAUS: Because, I mean,  
12       otherwise, they won't be in compliance, you  
13       know, and the statute requires what it  
14       requires. Now, whether you put that in place  
15       yourself or you're working with some financial  
16       institution that has that in place or can put  
17       that in place, you know, it's up to that  
18       licensee.

19           MR. FRAKER: Do the banks -- do trust  
20       companies keep these accounts separate?

21           CHAIRMAN: My trust company has bought  
22       new software for their accounts to be able to  
23       isolate every single account with the interest  
24       that that single account has earned and  
25       whatever, because they didn't use to do that.

1 I talked to them the other day.

2 MS. DUNN: I have been told this  
3 morning that Hawthorne Bank is canceling all  
4 their trusts with all funeral homes because  
5 they have their conflicting provisions in  
6 Senate Bill 1.

7 CHAIRMAN: And my trust company is  
8 saying we'll adapt.

9 MR. STALTER: Blue Ridge, too. I just  
10 heard it, Blue Ridge has.

11 CHAIRMAN: It's going to be a mess.

12 MS. RUSSELL: Blue Ridge has, also?

13 MR. KRAUS: It's opportunity for new  
14 businesses to come in and do some business.

15 CHAIRMAN: Absolutely. All right.  
16 See? So, the question was report individual  
17 -- the sellers?

18 MR. KRAUS: Yeah. On K20, we're going  
19 to do that the same as -- let's see.

20 MR. FRAKER: I don't think it's bad.  
21 I think it's fine to do that.

22 CHAIRMAN: Okay.

23 MR. FRAKER: I just -- (inaudible.)

24 CHAIRMAN: Do it and then we'll look  
25 at it whatever and then we'll back it up if



1 we need to.

2 MR. KRAUS: All right. I think that  
3 takes us down through the rest of that page.

4 CHAIRMAN: All right. Anybody got any  
5 comments that finish up page 5? Okay. Take  
6 a break.

7 (Off the record)

8 CHAIRMAN: K24.

9 MR. KRAUS: K24, certification under  
10 oath. Need a form for that? A Board form,  
11 or just have them do an affidavit like  
12 everybody does?

13 MS. DUNN: What do you think, Lori?

14 MR. KRAUS: Well, I guess, that may be  
15 on the form that you're already going to do.

16 MS. HAYES: Yeah.

17 MR. KRAUS: Yeah. That will be a part  
18 of the form.

19 MS. DUNN: Okay. So, we're okay on  
20 that.

21 CHAIRMAN: So, it's already taken care  
22 of. Answered its ownself. Twenty-five.

23 MR. KRAUS: All right. Twenty-five.  
24 Spreadsheet format for reporting joint  
25 accounts. I'm not sure if that goes towards

1 suggesting that or requiring it.

2 MS. EULER: I think that if they --  
3 they can report it however works for them, and  
4 if they want to send it in a spreadsheet,  
5 that's fine. I don't know that we need to  
6 address that specifically, but Board? Lori?  
7 What do you think? Would that make your life  
8 easier or do you care?

9 MS. HAYES: Whatever you --  
10 (inaudible.) Because everybody could have a  
11 different computer program; it's however they  
12 pull it, or you can do it by hand or --

13 MR. KRAUS: As long as the information  
14 is the same? Okay.

15 CHAIRMAN: Okay.

16 MR. KRAUS: Twenty-six is more  
17 defining of terms which we can put back into  
18 the prior two pages, I think. Twenty-seven  
19 should be part of the form. Yes.  
20 Twenty-eight, annual reporting fee, which  
21 fees, as I understand, we're going to do with  
22 financials which should be next week.

23 MS. EULER: Yeah.

24 MS. DUNN: Right now, you can go ahead  
25 and draft emergency rules, just not with the

1 fee amount in it.

2 MS. EULER: And just leave a blank for  
3 the -- in the amount of blank, because we need  
4 to have the rule ready to go next week.

5 MR. KRAUS: All right.

6 MS. EULER: So, if we could have the  
7 rule drafted for the Board to approve, we  
8 could fill in the blank.

9 CHAIRMAN: So, you all --

10 MS. DUNN: So, draft the rule for the  
11 fees and then we'll drop in the fee after we  
12 have the presentation on the financials and  
13 the projections next week.

14 CHAIRMAN: Did you all get that?  
15 Draft the rule for the fee and then do the  
16 amounts later.

17 MR. REINHARD: Yeah. That's good with  
18 us.

19 CHAIRMAN: All right. Yes.

20 MR. KRAUS: And we'll do that for all  
21 of the others, too.

22 MS. DUNN: Yes.

23 MR. KRAUS: All right.

24 CHAIRMAN: Perfect.

25 MR. KRAUS: Twenty-nine. How to do

1       this in transition. I think we've already  
2       dealt with that. I think; haven't we?

3               MS. EULER: Can I just bring something  
4       up? I know we talked about an emergency rule  
5       to allow the reporting this year be the same  
6       as last year. But I wonder if we want to add  
7       to that reporting something about their trust  
8       balance or the -- so, something that we know  
9       that their trust is properly funded or that  
10      their joint accounts or life insurance are  
11      properly funded -- maybe just some totals.  
12      The total amount held in trust, total amount  
13      in life insurance, total amount in joint  
14      accounts?

15             CHAIRMAN: I think that's a wonderful  
16      idea, but I think it'll be a nightmare.

17             MS. EULER: Why?

18             CHAIRMAN: Because I just saw myself  
19      having to go try to come up with all of that,  
20      along with trying to get my contracts ready,  
21      trying to -- that's not something that's just  
22      right there -- the totals.

23             MS. EULER: Well, is there something  
24      that would be more accessible, because I think  
25      -- I'm concerned that if we don't do that this

1 year, we have Senate Bill 1 in place this  
2 year, and if somebody goes south between this  
3 year and next October, they will look to this  
4 Board and go, you had this rule in place and  
5 you did nothing for reporting this year to  
6 even check on the financial status of people.  
7 That's my concern.

8 CHAIRMAN: And the financial status of  
9 that would only be the contracts written from  
10 August 28th to the end of the reporting date?

11 MS. EULER: No. For the previous --  
12 and didn't we talk about that last time about  
13 making the annual reports, standardizing them  
14 if they're for the calendar year or for a  
15 fiscal year or from October to October?

16 CHAIRMAN: We did that. We did that.  
17 October, to make it a standard.

18 MS. EULER: So, it's from October to  
19 October?

20 CHAIRMAN: Uh-huh. So, what do you  
21 guys think? I think it's a nightmare, but --

22 MS. EULER: I mean, is there something  
23 that we could ask reportingwise that's within  
24 the authority of Senate Bill 1 that would not  
25 be a nightmare?

1           MR. STALTER:   Not by October 31st.  
2           I'm just saying that I think that -- this is  
3           something you're going to have to plan ahead.  
4           But to get that kind of stuff together for  
5           October 31st, it's not going to happen.  It's  
6           going to be real rough.

7           MS. EULER:   Really?

8           MR. STALTER:   Yeah.

9           MS. EULER:   See, I would think --

10          CHAIRMAN:   I can't even sell a preneed  
11          and be legal on October 28th, but with where's  
12          my contract and all the language and all the  
13          la, la, la, and --

14          MS. EULER:   You can't -- I would think  
15          that a funeral home would be able to tell us  
16          how much money is in joint accounts or how  
17          much money is in insurance or how much money --

18          MR. REINHARD:  If you're like me.  I  
19          mean, I could go add those up for you, but,  
20          hell, you've got somebody that's like Gary,  
21          who has millions and Martin has got trillions,  
22          and Bill's got gazillions.

23          MR. STALTER:   I don't have any.

24          MS. EULER:   Well, I --

25          MR. REINHARD:  Well, I mean, you're --

1 (inaudible) -- if you added them all up.

2 Hell, yeah, it would be a nightmare.

3 MR. STALTER: Okay. Okay. Okay.

4 Yeah.

5 MR. MAHN: When you've only got two --

6 MR. REINHARD: And then -- and you  
7 don't know what -- (inaudible.)

8 MR. MAHN: Do you want them in  
9 alphabetical order?

10 MS. EULER: We'll alphabetize them for  
11 you, Jim.

12 MR. STALTER: And they're not even  
13 numbered sequentially.

14 CHAIRMAN: Here's your perfect example.

15 MR. REINHARD: One's on Jim and one's  
16 on Pam.

17 CHAIRMAN: One of the funeral homes  
18 that we purchased, when we purchased it, we  
19 asked for the information.

20 MS. EULER: Uh-huh.

21 CHAIRMAN: And they're, like, we don't  
22 have any records here of what totals -- of  
23 what we have in totals. We'll just have to  
24 go down to the bank --

25 MS. EULER: So, how do you --

1           CHAIRMAN: We'll just have to go down  
2 to the bank and have them add it up for us.

3           MS. EULER: Really?

4           MR. KRAUS: Which could be several  
5 banks.

6           CHAIRMAN: Which could be several  
7 banks. It was several banks. CDs here, CDs  
8 there, CDs here, CDs there. And I had to go  
9 get printouts from all those banks, and that's  
10 the only thing I had to check --

11          MS. EULER: So, you don't know?

12          CHAIRMAN: I didn't say everybody. I  
13 said one.

14          MS. EULER: Huh.

15          UNIDENTIFIED: That's how I would do  
16 it.

17          CHAIRMAN: So, I'm just saying it  
18 really would be.

19          MS. EULER: Okay.

20          CHAIRMAN: And half of the funeral  
21 industry doesn't even know this exists, let  
22 alone --

23          MS. EULER: Well, they would if there  
24 was a blank on their new -- on their annual  
25 report for this year.



1           MR. REINHARD: There's going to be  
2 several obituaries in the --

3           CHAIRMAN: Well, I know, but --

4           MR. REINHARD: -- Missouri Funeral  
5 directors' magazine.

6           MS. EULER: Okay.

7           (Several people talking simultaneously.)

8           CHAIRMAN: Actually, it really would  
9 be. It'll be hairy.

10          MR. MAHN: Aren't they going to have  
11 to give totals next year anyway?

12          MS. EULER: Well, okay. Yeah. They  
13 will next year.

14          MR. MAHN: All totals; right?

15          MS. EULER: Yeah.

16          MR. MAHN: It's going to take a year  
17 to go into totals probably.

18          MS. EULER: Okay. I'm just raising it  
19 as an issue.

20          MR. MAHN: It's a great --

21          CHAIRMAN: It's a great thought. I  
22 agree with the thought. The reality is the  
23 issue, though.

24          MR. MAHN: It's awesome. There just  
25 ain't enough time.

1 MS. EULER: Okay. All right. Well,  
2 I'm raising it as an issue.

3 CHAIRMAN: Okay. So, we passed that  
4 one. Next?

5 MR. KRAUS: K30.

6 UNIDENTIFIED: Don't you wish you were  
7 back over at the other building?

8 MS. EULER: No. I was treated the  
9 same way over there, so --

10 MR. KRAUS: This, I think, we have  
11 previously addressed. It's talking about what  
12 you want for the date, and this says by the  
13 31st of October of each year or by the date  
14 established by the Division -- or by Board --  
15 by rule.

16 CHAIRMAN: But that is the one we  
17 established, isn't it, because that is when  
18 the reports kind of were due or are due or  
19 whatever.

20 MS. EULER: Uh-huh. Okay.

21 MS. DUNN: Uh-huh.

22 MR. KRAUS: All right. K31, can there  
23 be a waiver of the late fee? I think that  
24 was a question. This says shall be subject to  
25 a late fee in an amount established by the

1 Board by rule. I don't envision that as  
2 enabling the amount to be zero, you know, if  
3 there's good cause. That's going pretty far  
4 beyond the statute, I think.

5 MS. EULER: And I think you will  
6 create more problems than you will solve if  
7 you allow a waiver provision, because  
8 everybody will want a waiver because everybody  
9 has got a good reason, or maybe I'm cynical.

10 CHAIRMAN: It just puts the Board in the  
11 discerning business.

12 MS. EULER: It -- yeah. It puts the  
13 Board in a bad situation. It's easier to  
14 enforce a bright-line rule than a shade of  
15 gray.

16 CHAIRMAN: Everybody in agreement with  
17 that?

18 MR. REINHARD: Yes.

19 MR. MAHN: Yes.

20 MR. KRAUS: But you'll be able to --  
21 and you'll be able to set what that late fee  
22 is.

23 MS. EULER: And you can set the late  
24 fee by gradation, if you want, you know. If  
25 you're 30 days late, it's 5 bucks; if you're

1       60 days late, it's \$150.

2               MR. REINHARD: I like gradation.

3               MS. EULER: If you're 6 months late,  
4       it's \$2,000. I mean, those are just made-up,  
5       make-believe numbers, but, you know, you could  
6       have a gradation if you wanted to.

7               MR. STALTER: Yeah. Yeah.

8               CHAIRMAN: I think the general feeling  
9       is leave it alone.

10              MR. REINHARD: Thank you for that new  
11       word today. I've never heard that word.

12              CHAIRMAN: Thank you?

13              MR. REINHARD: No. Gradation. Well,  
14       I never have.

15              MR. MAHN: They don't have that on the  
16       NASCAR station, do they?

17              MR. REINHARD: (Inaudible.)

18              (Several people talking simultaneously.)

19              CHAIRMAN: K32.

20              MR. KRAUS: K32. Specify that  
21       automatic suspension takes effect November 1,  
22       immediately after the reporting deadline.  
23       Let's see. If the seller fails to file an  
24       annual report on or before its due date, his  
25       or her preneed-seller license shall

1 automatically be suspended until such time as  
2 the annual report is filed and all applicable  
3 fees have been paid.

4 CHAIRMAN: So, we need a rule to just  
5 agree with that? That's what it says.

6 MR. KRAUS: It would suggest -- yeah.  
7 I mean, that's kind of what it says. I don't  
8 know if we --

9 MS. EULER: Yeah. Yeah.

10 MR. KRAUS: Do we need a rule to say  
11 it, too?

12 MS. EULER: It wouldn't hurt.

13 MR. REINHARD: Why do we need a rule  
14 to say what it says?

15 CHAIRMAN: Legal?

16 MS. EULER: It defines what  
17 automatically suspended would be.

18 MR. REINHARD: Okay.

19 MS. EULER: And it defines --

20 MR. KRAUS: Because there's not a date  
21 in the provision.

22 MS. EULER: There's not a date in the  
23 provision, and since you are setting the  
24 renewal fee -- the renewal-date deadline as  
25 October 31, it wouldn't be a bad idea. It's

1 up to the Board.

2 CHAIRMAN: Anyone against it?

3 MR. REINHARD: All right. Let's do  
4 it. Let's do it.

5 CHAIRMAN: Do it. You all said that;  
6 right?

7 MR. MAHN: Yes.

8 MR. REINHARD: If we don't do  
9 something, we ain't never going to get out of  
10 here, so come on.

11 CHAIRMAN: We've moving, though. We're  
12 moving. Thirty-three.

13 MR. KRAUS: Thirty-three. Automatic  
14 suspensions without notice could cause  
15 problems for both the licensee and the Board.  
16 The validity of any contracts written during  
17 the suspension would be in doubt.

18 MS. EULER: Well, I think everybody  
19 would have notice because there will be a  
20 notice attached to it that says if you don't  
21 file this, your license is suspended November  
22 1, and there's notice in the statute.

23 MR. KRAUS: Well, there will be in the  
24 rule, too.

25 MS. EULER: Uh-huh. And that's about

1 as public notice as you can get.

2 MR. KRAUS: Do you think there will be  
3 issues with the validity of the contracts? I  
4 think they would still be preneed contracts.

5 MS. EULER: The contracts --

6 MR. KRAUS: There would be --

7 MS. EULER: We could make a rule on  
8 that.

9 MR. KRAUS: Someone operating --  
10 someone could be operating under a suspended  
11 license --

12 MS. EULER: Yes.

13 MR. KRAUS: -- which would be a  
14 problem for them.

15 MS. EULER: It would be a problem for  
16 them, but not for the contract.

17 MR. KRAUS: I don't know if that would  
18 invalidate the contracts.

19 MS. EULER: Right. I don't think so.

20 MR. STALTER: Well, you have a -- it  
21 is. You can't sell a preneed contract without  
22 a license.

23 MS. EULER: Right.

24 MR. STALTER: So, if you don't have a  
25 -- if you have a suspended license, is the

1 contract -- is he compounding his problem by  
2 the fact of the automatic suspension?

3 MR. KRAUS: It might be, but I don't  
4 know what we do about it.

5 MS. EULER: It's a problem for him.

6 MR. STALTER: Yeah.

7 CHAIRMAN: Something that -- I was just  
8 looking at Don Otto's comments here that might  
9 really should be looked at is that during that  
10 automatic suspension, any contract sold during  
11 it are valid. In other words, if somebody  
12 really took preneed money and they were  
13 suspended --

14 MS. EULER: Right. They're still --

15 CHAIRMAN: -- because we don't want the  
16 customer hung out there with --

17 MS. EULER: They're still bound to the  
18 contract, but the seller is subject to  
19 discipline, subject to injunction, subject to  
20 all of those remedies, but not the contract.  
21 And maybe we need to specify that rule.

22 MR. KRAUS: But they would need to say  
23 that in rule, maybe.

24 MS. EULER: Yeah.

25 MS. RUSSELL: Martin, it's no



1 different than what you do with a funeral  
2 director or an embalmer that doesn't renew  
3 their license and they go ahead and embalm a  
4 body, then they are -- you know, then they're  
5 in trouble.

6 CHAIRMAN: Right.

7 MS. RUSSELL: You know, the body is  
8 still embalmed.

9 CHAIRMAN: That's true.

10 (Several people talking simultaneously.)

11 MR. KRAUS: It's still a valid  
12 embalming.

13 MS. EULER: It is.

14 CHAIRMAN: You can't go back on the  
15 embalming, but what if somebody -- I don't  
16 even know who the somebody would be or what,  
17 but what if somebody said, well, their license  
18 wasn't any good, though, so that contract is  
19 not, either.

20 MS. RUSSELL: Then that person would  
21 probably seek court action, yeah, against them.

22 CHAIRMAN: Legal -- okay. So, you're  
23 thinking that it's okay, it doesn't need  
24 addressed?

25 MS. EULER: Well, let's think about --

1           CHAIRMAN: Darlene, you're thinking  
2           it's okay, or it does?

3           MS. RUSSELL: I think it needs a draft  
4           that says just what you said.

5           CHAIRMAN: Okay. Okay.

6           MS. RUSSELL: You know, that -- I  
7           think it would be a great idea to have that  
8           clarified in rule. Bill is agreeing with me,  
9           even.

10          MR. STALTER: Well, I've suggested  
11          that, yeah.

12          MS. RUSSELL: (Inaudible.)

13          MS. EULER: So, let's talk about a  
14          different scenario. What if we have somebody  
15          who doesn't have a preneed-seller's license,  
16          that's never had a preneed-seller's license,  
17          who has said to the Board you can't make me  
18          and I ain't going to, and their contracts are  
19          still valid. What's their incentive to get a  
20          license?

21          MS. RUSSELL: You have an injunction.

22          MR. KRAUS: A judge telling them to.

23          MS. RUSSELL: That's what I'm saying,  
24          an injunction.

25          MS. EULER: Yeah. I mean, so we don't

1 want to hurt the consumers.

2 MR. KRAUS: Of course, we could limit  
3 this to addressing people operating under  
4 suspension.

5 MS. EULER: Yeah.

6 MR. STALTER: Suspension. Yeah.

7 MR. KRAUS: Under the automatic  
8 suspension --

9 MS. EULER: Under this rule.

10 MR. KRAUS: -- under this provision.

11 MS. EULER: Right. I think that would  
12 be good to narrowly tailor it.

13 MR. KRAUS: Okay.

14 CHAIRMAN: Everybody in agreement?

15 MR. REINHARD: That's two new words,  
16 narrowly tailored.

17 CHAIRMAN: Okay. Let's go. That's  
18 good.

19 MR. KRAUS: All right. The point sub  
20 8 there says this section shall apply to  
21 contracts entered into before August 28th,  
22 2009. The comment was, does this mean that  
23 that is -- that means only or does that mean  
24 also?

25 MS. EULER: It means also. It means

1       that in the reporting requirements, you have  
2       to report for contracts sold before August  
3       28th, as well as after.

4               MR. KRAUS:   That's how I read that,  
5       too.

6               MS. DUNN:   But if you're both  
7       discussing it, I think a rule needs to clarify  
8       it.

9               MS. EULER:   Uh-huh.   I think that's a  
10      good idea.

11              CHAIRMAN:   Any opposition?

12              MS. EULER:   How about a motion for?

13              CHAIRMAN:   That's by default, if  
14      there's no opposition.

15              MR. KRAUS:   Because it's just a draft.

16              CHAIRMAN:   That's right.

17              MS. EULER:   It's a directive.

18              CHAIRMAN:   It's a draft.   Okay.

19              MR. KRAUS:   All right.   Retention, 465.  
20      Adequate records.   We need to define what that  
21      is.

22              MS. DUNN:   Record retention.

23              CHAIRMAN:   Oh, yeah.   Yeah.   So, how  
24      are you going to define that?

25              (Several people talking simultaneously.)

1 MS. EULER: My thought on this is that  
2 we are better off leaving that left to the  
3 ordinary dictionary definition than trying to  
4 define it too much because if we try to define  
5 it too much, we may have somebody who meets  
6 the letter of the law, but not the spirit of  
7 the law. But that's -- if you think it would  
8 be useful for funeral directors to know what  
9 they need to keep, we could do a rule.

10 MR. KRAUS: It is hard to define.

11 MS. EULER: It is hard to define.

12 MR. KRAUS: Adequately.

13 CHAIRMAN: Okay. Board members, anyone  
14 against that or want to make a motion for it?

15 MR. MAHN: No. I think we --

16 CHAIRMAN: Define adequate or not  
17 define adequate?

18 MR. MAHN: I'm going to be honest with  
19 you. When you two attorneys start doing your  
20 lingo back and forth, I mean --

21 MR. KRAUS: It's all crackles and  
22 buzzes?

23 MR. MAHN: Yeah. I just go off.

24 CHAIRMAN: I followed that totally.  
25 That was easy.

1           MR. MAHN: Well, you'll stay in it  
2 then. You just stay and call us when it's  
3 noon, because --

4           (Several people talking simultaneously.)

5           MR. MAHN: Well, we were going along  
6 fine there for a little while, but, man.

7           MR. SPEAKS: What if it said  
8 including, but not exclusively, and then --

9           MS. EULER: Uh-huh. We could do that.  
10 I mean, Board members, you're in the business.  
11 Does --

12          MR. KRAUS: Of course, you can risk  
13 setting a minimum, but then everyone does just  
14 the minimum.

15          MS. EULER: Right. And that's the  
16 problem. Todd, what do you think?

17          MR. MAHN: I think it's 20 minutes --  
18 (inaudible) -- lunch.

19          MR. KRAUS: I think that would be a  
20 good thing for later.

21          MR. STALTER: Yeah. This is not an  
22 emergency issue, this is a --

23          MS. EULER: Okay. No.

24          MR. REINHARD: Down-the-road issue.

25          CHAIRMAN: Nonemergency issue. Call

1 the paramedics.

2 MR. REINHARD: Hey, that's -- we could  
3 do all these like that.

4 MR. MAHN: K36 through K63 are  
5 nonemergency.

6 MR. KRAUS: These? No, we don't need  
7 to do that.

8 MR. MAHN: Only highlight the one  
9 that's got red lights.

10 MR. KRAUS: All right. Adequate  
11 records. That's the same thing.

12 MR. REINHARD: Down the road.

13 UNIDENTIFIED: Down the road.

14 MR. KRAUS: Maintains within the state  
15 of Missouri in a format that's accessible --

16 MS. EULER: We have a similar rule for  
17 funeral establishments, don't we?

18 UNIDENTIFIED: All my records --

19 MS. EULER: Or did we just talk about  
20 that? I think it's a good idea to --

21 MR. KRAUS: I think it's a good idea.  
22 I don't think that's an emergency one, either,  
23 but I think it's a good idea.

24 CHAIRMAN: I think banking solved that  
25 last time with bricks and mortar, didn't they?

1 MR. KRAUS: Who did?

2 MS. EULER: I think it is.

3 MR. STALTER: No, not quite.

4 MS. EULER: I think --

5 CHAIRMAN: Not quite? Oh, okay.

6 MS. EULER: I think we need a rule on  
7 that. I would be more comfortable doing an  
8 emergency rule on that so if we do have  
9 disciplinary issues or audit issues, we've got  
10 the records easily accessible.

11 CHAIRMAN: That's the way it's  
12 basically always been, isn't it?

13 MS. EULER: No.

14 CHAIRMAN: Oh, sorry.

15 MR. KRAUS: For all those who do it  
16 the right way.

17 MR. REINHARD: What records are you  
18 talking about? Funeral-home records or the  
19 internal records or the accidental records?

20 MR. STALTER: Trust records.

21 MS. EULER: The preneed records.

22 MR. MAHN: (Inaudible.)

23 MR. REINHARD: Are you talking about  
24 the audit of my finances and at-need, preneed,  
25 for the last five years?



1 MS. EULER: We're talking about --  
2 yes. Your seller records of preneed contracts.

3 CHAIRMAN: I'm thinking they've always  
4 got to be here. I mean, in my mind, they  
5 always had to anyway. I mean --

6 MS. EULER: But unless you have a rule  
7 that says that, you can't enforce it.

8 CHAIRMAN: Well, I'm not sure whether  
9 we did, but I remember us doing a situation  
10 where we made them make copies of the preneed  
11 contracts and take them to another funeral  
12 home.

13 MR. STALTER: Sure. Yeah.

14 MS. EULER: Yes. And that's because  
15 we had a rule on that.

16 MR. STALTER: Now, you didn't -- it  
17 was not under 436.

18 MS. EULER: Not under 436, no.

19 MR. STALTER: Okay.

20 MS. EULER: But that's what I'm  
21 saying, we ought to have a rule under 436  
22 because when Lori goes out to inspect a seller  
23 and says, okay, I want to look at your preneed  
24 records, and they say, well, we keep those all  
25 in Vegas. And Lori comes back and says,

1 Board, I need authority to go to Vegas --

2 (Several people talking simultaneously.)

3 MR. SPEAKS: And what happens in Vegas  
4 stays in Vegas.

5 MR. KRAUS: So, this is gypping Lori  
6 out of a trip, is what you're saying?

7 MS. EULER: Pretty much. Lori has got  
8 responsibilities. She's got two kids at home.  
9 She can't be taking them to Vegas.

10 MR. SPEAKS: She needs a trip to Vegas.

11 MR. REINHARD: Yeah.

12 MR. KRAUS: What if that company in  
13 Vegas stores them all electronically and that  
14 person can obtain them electronically when  
15 Lori asks for them?

16 MS. EULER: So long as they're -- and  
17 that's what this says. They can be obtainable  
18 in Missouri, but we have -- this has been an  
19 issue. This has been an issue with the Board,  
20 that the Board has lost on, because there  
21 wasn't a rule. And so, there is no point in  
22 requiring records if everybody is going to go  
23 rent a storage unit in Vegas because that's  
24 like having no records because the Board is  
25 not going to send Lori to Vegas every six

1 months to look at the records.

2 (Several people talking simultaneously.)

3 CHAIRMAN: Right. So, we need the  
4 rule.

5 MS. EULER: Or North Dakota; how about  
6 that? They keep their records in North Dakota.

7 CHAIRMAN: Is anyone against that rule?

8 MR. STALTER: This is kind of a  
9 down-the-road rule, isn't it?

10 MS. EULER: It's also an emergency  
11 rule. Because everybody -- we need to be able  
12 to act upon our authority under Senate Bill 1  
13 now. We need to be able to go out and  
14 inspect records now as opposed to waiting 12  
15 months while we have a regular rule.

16 CHAIRMAN: Do you see a problem with  
17 that?

18 MR. STALTER: We'll have to figure out  
19 formats, you know, how -- when they have to be  
20 accessible. And we discussed this on the  
21 cemetery side and we were talking about, you  
22 know, five or ten business days, you know.

23 MS. EULER: Yeah.

24 MR. STALTER: And to the  
25 accessibility, what format are you looking for

1 from fiduciaries and so forth, so --

2 MS. EULER: Well, I think --

3 MR. STALTER: You just have to be  
4 careful about what you're -- how you're going  
5 to define what they have to have and when they  
6 have to have it there.

7 MS. EULER: Right. I agree, but I  
8 think we can do that.

9 MR. STALTER: I don't disagree.

10 MS. EULER: And we may --

11 MR. STALTER: I just don't think it's  
12 an emergency rule; that's what I'm saying.

13 MS. EULER: Well, we may need to  
14 refine it in a permanent rule, but I think we  
15 need an emergency rule because I know Bill is  
16 going to tell all of his clients to go rent  
17 storage lockers in North Dakota; right, Bill?

18 MR. STALTER: Well, actually, I mean,  
19 when you say that --

20 MR. MAHN: Vegas.

21 MR. STALTER: Actually, you mention  
22 that, but all of my decisions for US Bank are  
23 made out of Fargo, North Dakota.

24 MS. EULER: See?

25 MR. STALTER: I'm not going there.

1 MS. EULER: But I think we need some  
2 rule that says if you're operating in Missouri  
3 and we come out to take a look at your books  
4 and records, we need to be able to do that in  
5 Missouri without having to go to Fargo.

6 CHAIRMAN: Anyone --

7 MR. REINHARD: Really happy campers  
8 over that.

9 MR. STALTER: Yeah. You're close  
10 enough -- (inaudible.)

11 MS. DUNN: Plus in a format that we can  
12 understand.

13 MS. EULER: Right.

14 MS. DUNN: Because we've gotten that  
15 done one other time --

16 MR. REINHARD: Well, yeah. Write  
17 something up and we'll look at. Go on.  
18 Let's go.

19 MS. EULER: So, is that a motion to --

20 MR. REINHARD: Yeah. Write it up and  
21 we'll look at it.

22 MR. KRAUS: All right.

23 CHAIRMAN: Okay. Yes.

24 MS. DUNN: We're doing yeas and nays.

25 MR. KRAUS: Thirty-eight. Five-year

1 period, it's intended to cover the open-audit  
2 period to the extent the trust is audited with  
3 passing colors, the seller could be free to  
4 begin disposing of records less than five  
5 years after the performance.

6 MS. EULER: No.

7 CHAIRMAN: What records?

8 MS. EULER: I think you need to keep  
9 the records for five years whether you've been  
10 audited or not. Oh, for no less than five  
11 years.

12 MR. KRAUS: For the duration of the  
13 contract and for no less than five years after  
14 the performance or cancellation of the  
15 contract.

16 MR. STALTER: The question here has to  
17 do with whether there is an audit or not,  
18 because they've been audited, you know --

19 MS. EULER: I don't think it matters.

20 MR. STALTER: Just that -- okay. I  
21 mean, it's just -- these bigger companies  
22 about how many records they've got to keep.

23 MS. EULER: Uh-huh. Uh-huh.

24 MR. KRAUS: They figure that, well,  
25 they just audited us, so the next audit is not

1 going to be for a while, so we can get rid of  
2 all these?

3 MR. STALTER: Yeah. And the risk we're  
4 talking about cancel -- or the performed  
5 contracts, and how long are you going to  
6 require them to keep their performed  
7 contracts. And, really, they should keep them  
8 for a period of three years for -- you talk  
9 about tax audits and so forth, but,  
10 truthfully, you know, at some point, they just  
11 need a clear line about when they can then  
12 start destroying old records.

13 MS. EULER: And I think the statute  
14 sets forth that clear line of five years.

15 MR. STALTER: Okay.

16 MS. EULER: Do we need a rule on that?

17 CHAIRMAN: Need a rule? Did I hear  
18 you guys say we do -- you think we do or we  
19 don't?

20 MS. DUNN: I don't think there's any  
21 opposition. What did you think, Earl?

22 MR. KRAUS: I agree.

23 CHAIRMAN: That we do or don't?

24 MR. KRAUS: That we don't.

25 CHAIRMAN: Don't.

1 MS. DUNN: Okay.

2 CHAIRMAN: Okay. Legal says we don't.  
3 It's clear and forward.

4 MR. KRAUS: 470, K39, the Board shall  
5 conduct a financial examination of the books  
6 and records of each seller. I think there is  
7 the issue of defining or, maybe more  
8 importantly, whether there is any process that  
9 needs to be set out.

10 MS. EULER: No.

11 MR. KRAUS: And maybe there doesn't  
12 need to be.

13 MS. EULER: I don't think so.

14 MR. REINHARD: So, what do you mean?  
15 You don't -- you're just going to say  
16 examination. Does that mean, like, Lori comes  
17 in here and says give me five contracts and --

18 MS. EULER: It could. I think that  
19 that flexibility is good because the more --  
20 the Board may direct different kinds of  
21 financial examinations. So, for, like, you  
22 with only two preneed contracts, the Board is  
23 going to do a different financial examination  
24 of you than Martin's -- how many did you say  
25 you have; a trillion?



1           CHAIRMAN: Trillions.

2           MS. EULER: --than Martin's trillions  
3           -- six trillion contracts.

4           MR. STALTER: Yeah. Gazillions over  
5           here, but --

6           MS. EULER: Okay. So, I mean, that  
7           would be my perspective on it, but I don't  
8           have a vote.

9           MR. STALTER: I'll take a flip side of  
10          that is that what I'd like to see out there,  
11          I mean, some different approaches to it so  
12          that the operators know what to expect when  
13          there is a financial examination. That there  
14          might be a very easy one for Jim, because we  
15          know it's going to have to be easy for Jim.

16          MS. EULER: Uh-huh. Because he has two  
17          contracts.

18          MR. STALTER: Uh-huh.

19          MS. EULER: Well --

20          MR. STALTER: But, I mean, some -- if  
21          the date -- if we set out --

22          MR. REINHARD: (Inaudible.)

23          MR. STALTER: -- the format of this so  
24          that they know how to keep records. That's  
25          what I'm driving at on this.

1 MS. EULER: Uh-huh. Okay. And I see  
2 your point --

3 MR. REINHARD: And I agree.

4 MS. EULER: -- and I wonder if that's  
5 something that might be more useful to take up  
6 after we've had a little experience with this  
7 law and we see what needs to be done and see  
8 if it's an issue.

9 MR. REINHARD: So, we could do that  
10 down the road?

11 MR. STALTER: It's a down-the-road  
12 thing.

13 MS. EULER: Yeah, I think so.

14 MR. REINHARD: But what -- and I think  
15 it's back to what he's saying is, like, there  
16 is a difference. I mean, are you going to  
17 say -- is this, like, are we going to random  
18 audit everybody and then if you pick a random  
19 audit, do you get actually -- we call up an  
20 account and then have a firm go in and audit  
21 them? Or are we going to, like -- are you  
22 just going to have, like, an examination  
23 where, like, our inspectors -- I mean, I think  
24 you're going to have to get down to some of  
25 this to where it makes sense --

1 MS. EULER: Right.

2 MR. REINHARD: -- because like he did  
3 -- you know, he's saying these guys that small  
4 --

5 MS. EULER: Right.

6 MR. REINHARD: -- there's a lot of  
7 small funeral homes that just will be just  
8 horrified.

9 MS. EULER: Right. And I think that  
10 this --

11 MR. REINHARD: Here's the keys.

12 MS. EULER: -- that this gives you that  
13 flexibility, too.

14 MR. STALTER: Okay. So, down the road.

15 MS. EULER: Yeah.

16 MR. REINHARD: So, we'll move on.

17 CHAIRMAN: So, what you -- the  
18 determination was just defining what is audit,  
19 what is inspection --

20 MS. EULER: Financial examination.

21 CHAIRMAN: -- what is -- the degree of  
22 that; right?

23 MS. EULER: Uh-huh.

24 MR. REINHARD: Right. But we're going  
25 to do that later; right? Yeah.

1 CHAIRMAN: Okay.

2 MR. REINHARD: Down the road.

3 CHAIRMAN: Everybody -- you guys  
4 agree? Okay. Nonemergency.

5 MR. KRAUS: Okay. The same with the  
6 issue of notice to the licensee whether  
7 there's --

8 MS. EULER: I don't think there needs  
9 to be notice to the licensee.

10 MR. KRAUS: I don't think there does,  
11 either.

12 MS. EULER: This notice is the Board  
13 shall issue notice authorizing someone to do  
14 the inspection, the examination, or audit.  
15 It's not notice to the licensee.

16 MR. KRAUS: Right.

17 MR. REINHARD: Right.

18 MR. KRAUS: All right.

19 CHAIRMAN: Okay.

20 MR. KRAUS: Forty-two. Defining more  
21 terms. Do those go into the later pile, also?

22 MS. EULER: Yeah, I think so.

23 MR. KRAUS: Conflict of interest,  
24 affiliated with management, owns a pecuniary  
25 interest.

1 CHAIRMAN: Wouldn't it have to be?

2 MR. KRAUS: I think it would be -- all  
3 go together.

4 MS. EULER: Yeah.

5 CHAIRMAN: All agree it all goes with  
6 the other?

7 MR. REINHARD: Uh-huh.

8 CHAIRMAN: Okay.

9 MR. KRAUS: Forty-three. Entering the  
10 office, that goes with that, too.

11 MS. EULER: Uh-huh.

12 CHAIRMAN: All agree. Okay.

13 MR. KRAUS: Forty-four. Well, this is  
14 -- I'd put that in the same pile. The same  
15 with forty-five.

16 MR. REINHARD: No. We move it to the  
17 other pile.

18 MR. KRAUS: Forty-six on subpoenas,  
19 you could develop a form subpoena if you  
20 wanted to, but it would be issued by you.

21 MS. EULER: Yeah.

22 MR. KRAUS: You don't have to do that.

23 MS. EULER: No.

24 MR. KRAUS: I think if you do, that  
25 would be for later anyway.

1 CHAIRMAN: Okay. Heads are nodding.

2 MR. KRAUS: Forty-seven. Board,  
3 Division of Finance, Department of Insurance,  
4 financial institutions, and professional  
5 registration, and the office of attorney  
6 general may share information regarding a  
7 number of things. And the Board could  
8 consider doing a memorandum of understanding.  
9 Of course, that's completely outside the rules  
10 process.

11 MS. EULER: Uh-huh.

12 MR. KRAUS: We're not even talking  
13 about any kind of rule, much less an emergency  
14 rule. I think if the Board were to do that,  
15 that would be for later on. And you really  
16 wouldn't have to do that, but it may  
17 facilitate communication.

18 MS. EULER: Uh-huh. Yeah.

19 CHAIRMAN: That's okay?

20 MR. KRAUS: Forty-eight. May institute  
21 independently; right? It's the office of the  
22 attorney general initiating judicial  
23 proceedings.

24 MS. EULER: And my view of that is  
25 that seems, to me, what the statute says

1 already, and I don't know that we need to mess  
2 with it.

3 MR. KRAUS: I think that's what --  
4 yeah. I think it is what it says already. I  
5 think they mean they may need information from  
6 the Board to know about it, but --

7 MS. EULER: Uh-huh. Right.

8 MR. REINHARD: (Inaudible.)

9 MR. KRAUS: I don't think we need a  
10 rule.

11 CHAIRMAN: Everybody looks happy with  
12 that.

13 MR. KRAUS: All right. On to 436.480,  
14 purchaser's debt incapacity. This section  
15 needs -- K49, this section needs to be  
16 consistent with any enforceable right of  
17 sepulcher designation.

18 MS. EULER: Well --

19 MR. KRAUS: I see Don has got a note  
20 about that. Did you want to --

21 MS. EULER: Under the law, the right of  
22 sepulcher doesn't have anything to do with  
23 enforcing legal rights. Only a personal  
24 representative appointed by the court or the  
25 estate can enforce legal rights. So, the

1 right of -- if you have the right of -- if  
2 you're the --

3 MR. KRAUS: But sepulcher is a  
4 separate right that someone has.

5 MS. EULER: The right of sepulcher is  
6 the right to control final disposition, it's  
7 not the right to enforce contractual  
8 agreements.

9 MR. KRAUS: Right. It's not a power of  
10 attorney.

11 MS. EULER: It's not a power of  
12 attorney, it's not a court-appointed personal  
13 representative for the estate.

14 MR. KRAUS: So, what do you do in a  
15 conflict when you have someone with the right  
16 of sepulcher wanting to do one thing and  
17 someone with power of attorney under a preneed  
18 contract directing something different?

19 MS. EULER: You tell the funeral home  
20 to contact their own attorney.

21 MR. KRAUS: I like it.

22 MR. REINHARD: There we go. Write  
23 that in the rule. Okay.

24 MR. MAHN: I'm going to put one on  
25 staff.



1 MS. EULER: Well, the thing -- the  
2 difference here is that this statute is  
3 talking upon rights and remedies, who enforces  
4 rights and remedies. And the goods and  
5 services, the at-need contract is not a right  
6 or remedy. But, say, the person is dead and  
7 there's a dispute with enforcing the preneed  
8 contract. Only the personal representative  
9 can enforce the preneed contract. Having the  
10 right of sepulcher doesn't give you the right  
11 to enforce the preneed contract.

12 MR. REINHARD: Say that again. Not  
13 the whole thing, just the last sentence.

14 MS. EULER: Having the right of  
15 sepulcher does not give you the legal  
16 authority to enforce a preneed contract. The  
17 only person who could enforce a contract on  
18 behalf of the decedent would be the personal  
19 representative --

20 MR. REINHARD: Oh, okay.

21 MS. EULER: -- appointed as part of the  
22 estate.

23 MR. STALTER: But --

24 MR. REINHARD: So, which happens,  
25 hell, like a month later?

1           MR. STALTER: Yeah. That's -- yeah.  
2 Exactly. Your personal representative, it may  
3 be weeks or a month later.

4           MS. EULER: That's true.

5           MR. STALTER: So, we're sitting here  
6 trying to figure out what to do with this  
7 preneed contract.

8           MS. EULER: Well, you march down to the  
9 courthouse and you file an estate and you get  
10 appointed as PR so you can do it because only  
11 the PR can legally enforce rights of the  
12 decedent.

13          MR. STALTER: Unless the preneed  
14 contract then defines who can enforce it in  
15 the purchaser's absence.

16          MS. EULER: The right of sepulcher  
17 governs final disposition.

18          MR. KRAUS: But there, again, you can  
19 --

20          MR. SPEAKS: That doesn't automatically  
21 transfer any other powers onto that person.

22          MS. EULER: Right.

23          MR. SPEAKS: That's the whole point.

24          MS. EULER: Right.

25          MR. KRAUS: Yeah. And there, again,

1       you could end up with the same conflict --

2               MR. SPEAKS:   Yeah.

3               MR. KRAUS:   -- if the contract says  
4       this person determines upon my death what  
5       happens -- you know, who can go forward in  
6       asserting rights under the contract.  Those  
7       are different rights than the right of  
8       sepulcher --

9               MS. EULER:   Right.

10              MR. KRAUS:   -- which maybe the same  
11      person has, maybe somebody else had, and then  
12      you have two different rights coming at each  
13      other.

14              MS. EULER:   And that's when you file a  
15      lawsuit.

16              MR. SPEAKS:   Would you have to hire a  
17      lawyer to do that?

18              MS. EULER:   No.

19              MS. DUNN:    They'll hire you acting as  
20      such.

21              MR. SPEAKS:   I don't know where we  
22      could find one.

23              MR. STALTER:   One that knows what he's  
24      doing.

25              MS. EULER:    You can represent yourself

1 pro se, if you like.

2 CHAIRMAN: So, do we need to do  
3 something with this?

4 MR. KRAUS: So, is the consensus no?

5 MS. EULER: No.

6 MR. STALTER: No.

7 CHAIRMAN: No. Okay.

8 MR. REINHARD: Thank God.

9 MR. STALTER: I got my answer.

10 CHAIRMAN: Thank you for the legal  
11 lesson.

12 MR. KRAUS: 436.485. No comments. Any  
13 thoughts from the room? Hearing none.  
14 436.490, provider cease business. Shall file  
15 a notification report on a form established by  
16 the Board.

17 CHAIRMAN: That's just consistent with  
18 all the rest of it, isn't it?

19 MS. DUNN: Yes.

20 MR. KRAUS: So, I assume we'll develop  
21 a form for that.

22 MR. REINHARD: Yeah. Get a nice one,  
23 too, because there's going to be about 100,000  
24 of these. Yeah, we're done. NPS killed us  
25 and now the Board hit us upside the head.

1 We're really done.

2 MR. KRAUS: And, Becky, you all are  
3 putting the forms together; right?

4 MS. DUNN: We -- you know, we have a  
5 bunch of draft forms that Lori put together  
6 some time ago.

7 MR. KRAUS: Right.

8 MS. DUNN: We just need to --

9 CHAIRMAN: And 51 would go with the  
10 same, wouldn't it?

11 MR. KRAUS: The report required by this  
12 section shall include -- yeah. As to whether  
13 that would be built into the form or a  
14 required attachment to the form, I would  
15 expect.

16 MS. EULER: Yeah. And, again, I don't  
17 think we're picky as to the attachment. If  
18 they -- if people want to do it as an Excel  
19 spreadsheet, that's fine. If they want to  
20 handwrite it out, so long as it's legible,  
21 that's fine.

22 MR. KRAUS: And I think that can be  
23 indicated on the form.

24 MS. EULER: Uh-huh.

25 MR. KRAUS: That there are those

1 options.

2 MS. EULER: As long as the information  
3 is there and it's easily readable and  
4 organized, I don't think we care what format.

5 CHAIRMAN: Couldn't that also -- and  
6 we had this at least twice already. But  
7 couldn't it also be like we did just an  
8 example of the embalming log on the Web site  
9 so you can download a spreadsheet and just  
10 fill in the blanks?

11 MS. EULER: Uh-huh. Absolutely. Yes.  
12 Yes.

13 CHAIRMAN: Okay.

14 MS. EULER: But I don't think we have  
15 to mandate that people do it that way.

16 CHAIRMAN: Right. All right. So, the  
17 answer to that was no. Everybody agree? Move  
18 right on.

19 MR. KRAUS: All right. Purchasers,  
20 52. Will provider have to notify each  
21 purchaser? That's the report, and this  
22 section shall include the name, phone number,  
23 and address of the purchasers of any  
24 outstanding preneed contract for which the  
25 licensee is the designated provider.

1 MS. EULER: Not under this section.

2 MR. KRAUS: Yeah. I'm not sure what  
3 that means.

4 MS. EULER: And the reason why the  
5 Board needs that information is so when Mary  
6 Jane calls in ten years from now and says,  
7 well, I had a preneed with Bob Smith, or I  
8 don't know who I had a preneed with, but I  
9 lived in Nowhere, USA, that the Board can look  
10 up and say, yeah, you had a preneed with Bob  
11 Smith and now you need to call Joe Blow,  
12 because we get -- Becky gets those kinds of  
13 calls, don't you, Becky?

14 MS. DUNN: We do.

15 CHAIRMAN: This would be similar to,  
16 like, calling Division of Insurance and saying  
17 XYZ Insurance Company went out of business,  
18 who is now handling those contracts?

19 MS. EULER: Yes. Yes.

20 CHAIRMAN: So, are you going to start  
21 maintaining that database?

22 MS. DUNN: Well --

23 MS. EULER: We'll have the information  
24 available.

25 MS. DUNN: Yeah.

1           CHAIRMAN: For \$50 an hour, going back,  
2 digging through the files.

3           MS. EULER: Yes.

4           CHAIRMAN: Okay. But do we need a  
5 rule for that? Is that legal from legal, do  
6 you think?

7           MS. EULER: I don't think so, unless  
8 the Board thinks so.

9           CHAIRMAN: Hey, if you don't think so.

10          MS. DUNN: Well, emergency.

11          CHAIRMAN: Right. Okay. Nonemergency.

12          MR. KRAUS: Fifty-three. Does this  
13 refer to if any preneed contracts, there must  
14 be a provider to each preneed contract; right?

15          MS. EULER: This means if there is  
16 someone assuming the responsibility for the  
17 contract, they need to be listed, and if there  
18 is not, then there is no one to list.

19          MR. KRAUS: Yeah. I think that  
20 comment was because it's going towards --  
21 because the wording "under a preneed contract,  
22 if any."

23          MS. EULER: Yeah.

24          MR. KRAUS: Well, that kind of reads  
25 funny.



1 MR. EULER: Yeah.

2 MR. KRAUS: Of course, there's a  
3 preneed contract, or what are you doing?

4 CHAIRMAN: So, do you need to set that  
5 out or --

6 MS. EULER: I would suggest a rule  
7 setting that out and for the Board to consider  
8 whether you want a rule that says every  
9 provider ceasing to do business shall make a  
10 good-faith basis to find a provider to handle  
11 the contracts. What do you think?

12 CHAIRMAN: Do you have a question mark  
13 there?

14 MR. KRAUS: Do I what?

15 CHAIRMAN: I thought I heard a  
16 question mark in your voice.

17 MR. KRAUS: Oh, no.

18 CHAIRMAN: Okay. So --

19 MS. EULER: Does the Board want -- I  
20 mean, do you want to put that responsibility  
21 on the providers? I know the Board has done  
22 so in the past on kind of an encouragement  
23 basis. It might be useful to have a rule  
24 that says that.

25 CHAIRMAN: Anyone disagree? Go for

1       it.   What other information, though?

2       Fifty-four, I assume, is where everybody is  
3       looking.

4               MS. EULER:   I don't know that we have  
5       any at this point.   We may, as time goes on,  
6       but I don't --

7               CHAIRMAN:   Nonemergency?   All agree?  
8       Yeah.   Nonemergency.

9               MR. KRAUS:   Fifty-five, must require a  
10      written notice, provider shall notify each  
11      seller in writing.   Set out what's required to  
12      be included in that?

13              CHAIRMAN:   Didn't we do something  
14      similar to that back a few pages?

15              MR. KRAUS:   I think you had --

16              MS. EULER:   Do we want to do just a  
17      general definition as to what written notice  
18      means throughout the statute because it's used  
19      in several places?

20              MR. KRAUS:   We could.

21              CHAIRMAN:   If they define written  
22      notice for several places, does that make  
23      sense?

24              MR. KRAUS:   We could do that unless  
25      otherwise more specifically defined in a

1 particular section, it shall mean --

2 MS. EULER: Right.

3 MR. MAHN: Not a problem. Yes.

4 MR. KRAUS: I like that.

5 MS. EULER: Notice in writing.

6 CHAIRMAN: I hear yeses. Well, we've  
7 got to finish, we've only got five more; don't  
8 you think?

9 MS. EULER: Yeah. Let's go.

10 CHAIRMAN: If they're easy.

11 MS. DUNN: Okay.

12 MR. KRAUS: 436.500.

13 CHAIRMAN: K56 says need a form.

14 Isn't that just an in general with all the  
15 rest of it?

16 MS. EULER: Yes.

17 MR. STALTER: Yeah.

18 MR. KRAUS: Got to have a form.

19 CHAIRMAN: Next, 57.

20 MR. KRAUS: The Board use its audit  
21 powers to provide some assurance to buyers.

22 MS. EULER: No.

23 MR. KRAUS: Has consented to assuming  
24 the outstanding obligations of the seller.

25 MS. EULER: The problem with that is

1     that these records are closed records, not  
2     subject to disclosure. That's one problem.  
3     Problem number two is what's on lines --  
4     paragraph -- lines 25 through 30, that the  
5     Board is prohibited from using its audit  
6     records to amend, rescind, or supersede any  
7     duty imposed on or due diligence required of  
8     an entity assuming the obligations of the  
9     seller. So, I think that section prohibits  
10    the Board from using its audit powers to  
11    provide assurance to buyers.

12           CHAIRMAN: So, it's just -- doesn't  
13    matter anyway?

14           MS. EULER: The audit is for the Board  
15    to insure compliance.

16           CHAIRMAN: But the comment 57 is just  
17    doesn't apply; correct?

18           MS. EULER: Right.

19           CHAIRMAN: All agree it doesn't apply?  
20    Okay. End of story.

21           MR. KRAUS: Fifty-eight, could develop  
22    a rule on the seller may file a plan, set out  
23    requirements, and leave format to the seller.  
24    So, you could just leave it as is, you could  
25    set out what such a plan must include.

1           CHAIRMAN: That sounds too big for  
2 emergency rule to me.

3           MR. KRAUS: You could even develop a  
4 form.

5           MS. EULER: Uh-huh.

6           CHAIRMAN: Doesn't it, you, seriously?

7           MS. EULER: Yeah.

8           CHAIRMAN: For us to create the  
9 developed seller plan in advance?

10          MS. EULER: Right. No.

11          MR. STALTER: No.

12          MS. EULER: We may want a rule there to  
13 clarify that the seller shall use good-faith  
14 efforts to protect the preneed contracts and  
15 to find a seller to service the preneed  
16 contract for the future or something like that.

17          CHAIRMAN: So, do you see that as  
18 emergency?

19          MS. EULER: Yes.

20          CHAIRMAN: So, basically, the  
21 good-faith effort being the emergency thought?

22          MS. EULER: Yes.

23          CHAIRMAN: Kind of simple. Anybody  
24 see issue in that? Go for it.

25          MR. KRAUS: Fifty-nine, any other

1 information, maybe trust statement or bank  
2 insurance statements showing balances.

3 CHAIRMAN: Isn't that what I referred  
4 to as I was saying could be the problem  
5 thinking about what Sharon was thinking we  
6 might need some totals? In other words, some  
7 funeral homes go down to the bank and just say  
8 print me off my statement, and why would that  
9 be an issue.

10 MS. EULER: Well, I think it's a good  
11 idea, actually, because for the annual  
12 reports, you're going to need to do that  
13 anyway. And so, it's kind of like they need  
14 to file a final annual report.

15 CHAIRMAN: But I like the word "could"  
16 there, not that you have to go to the bank  
17 and get those printouts and --

18 MS. EULER: No. No. No. That they  
19 need to file a final -- file what would be  
20 ordinarily the annual report, but file a final  
21 one.

22 MR. STALTER: Or an interim. Really,  
23 what you're doing is in between the annual  
24 report --

25 MS. EULER: Right.

1           MR. STALTER:  -- and, now, we're  
2           selling a property, so then you have an  
3           interim report.

4           MS. EULER:  Here is our final annual  
5           report.  Instead of requiring them to file it  
6           in October, that they need to file it with the  
7           Board at the cease doing business, because  
8           that would have that information in it.

9           (Several people talking simultaneously.)

10          CHAIRMAN:  Lots of conversation, so,  
11          obviously, we need to look at it; agreed?

12          MR. REINHARD:  Yes.

13          MR. MAHN:  Yes.

14          CHAIRMAN:  Yes.  Agreed.

15          MS. EULER:  What does the Board think?

16          CHAIRMAN:  Yes, look at it.

17          MR. KRAUS:  But you want the other  
18          information to be what?

19          MS. EULER:  That they file an annual  
20          report is ordinarily due October 31, but file  
21          it at the time they file their cease doing  
22          business -- a final report of some -- we'll  
23          make up some name for it.

24          MR. KRAUS:  Well, you can refer back  
25          to the other section.

1 MS. EULER: Yeah.

2 CHAIRMAN: Okay.

3 MS. EULER: But they need to file it  
4 with their cease.

5 CHAIRMAN: Sixty is the word "notify"  
6 again. Haven't we already addressed that once?

7 MS. EULER: Yes.

8 CHAIRMAN: Or twice or three times or  
9 four times. Sixty-one, written notification.  
10 I think we already hassled that back a page or  
11 two, didn't we?

12 MR. KRAUS: Next, 505, credit life. No  
13 comments.

14 CHAIRMAN: No comments.

15 MR. KRAUS: Anything from the room?

16 CHAIRMAN: No.

17 MR. KRAUS: Moving on. 510, provider  
18 may demand payment from trustee. K62, need a  
19 reg setting out conditions, timing and release  
20 for trustee to be protected. Let's see.

21 MS. EULER: Bill, did this come from  
22 you?

23 MR. STALTER: Yeah. And I'm thinking  
24 what were terms when they got a --

25 MS. EULER: What would you suggest?



1           MR. STALTER: When you've got a --  
2 say, an alternative or a -- (inaudible) --  
3 replacement provider or something of that  
4 nature.

5           MS. EULER: Right.

6           MR. STALTER: And there's some kind of  
7 dispute. There is -- you know.

8           MS. EULER: Right.

9           MR. STALTER: Yeah.

10          MS. EULER: I think it's probably a  
11 good idea. What would you suggest in terms of  
12 timing and release?

13          MR. STALTER: That's a down-the-road  
14 thing. Let's just say at some point --

15          MS. EULER: Okay.

16          MR. STALTER: -- or I'll give you a  
17 suggestion.

18          CHAIRMAN: Nonemergency. But even is  
19 that, 63, there's nothing there.

20          MR. KRAUS: Twenty, rule-making  
21 authority.

22          CHAIRMAN: That's about fees.

23          MS. EULER: Yeah. It just says --  
24 yeah.

25          CHAIRMAN: Later.

1 MS. EULER: Yeah.

2 CHAIRMAN: We are done.

3 MS. EULER: Ta-da. All right.

4 MS. DUNN: With that.

5 CHAIRMAN: With that. Correct.

6 MS. DUNN: Yeah.

7 CHAIRMAN: We are done with that. So,  
8 that leaves us to go to lunch. And we will  
9 be addressing the emergency rules or  
10 considering them and the draft for the intent  
11 when we come back. And it's 12:05, so 1:30?  
12 Does that work well for -- does that do what  
13 we need? Okay. Go eat lunch and be back at  
14 1:30.

15 (Off the record)

16 CHAIRMAN: Did you get the handout on  
17 the emergency rules that Lori is working with  
18 there?

19 MS. DUNN: We should have three  
20 handouts that we're going to discuss now.

21 MS. EULER: And the notice of intent.

22 MS. DUNN: Oh, and the notice of  
23 intent. Okay.

24 CHAIRMAN: Okay. Take it away, legal  
25 counsel.

1           MR. KRAUS: Do we want to start with  
2 the form?

3           MS. EULER: Start with the form.

4           MR. KRAUS: The one that says "draft"  
5 across the front really big. Notice of intent.

6           MS. DUNN: Do you want to walk through  
7 it?

8           MS. EULER: Uh-huh.

9           MS. DUNN: Okay.

10          MS. EULER: I'll do it.

11          CHAIRMAN: All right.

12          MS. DUNN: Okay.

13          MS. EULER: Let's just do a quick  
14 walk-through of this. This is what we put  
15 together as a form for people to file the  
16 notice of intent, the idea being that people  
17 would fill this out, keep a copy of it for  
18 them to post as their temporary permit, send a  
19 copy to the Board, and that so long as the  
20 Board has a copy of this on file, it will be  
21 your permit to practice. It's not a license,  
22 it's simply a permit to practice until the  
23 Board either grants or denies your application  
24 for licensure, or December 31st, whichever  
25 comes first. A condition of this permit being

1 in effect is that you have to file your real  
2 application by -- and I put in October 31, but  
3 that date is flexible and up to the Board.  
4 So, that's what's in the instructions. One  
5 notice of intent per entity, so if you are a  
6 corporation filing to be a provider and a  
7 seller, you check both boxes. If you're an  
8 individual registering as an agent, you just  
9 check the agent box.

10 MS. DUNN: But if you have multiple  
11 funeral directors that are going to be an  
12 agent, then each one of them will need that  
13 form.

14 MS. EULER: Right. Each person or  
15 legal entity needs to file a separate one of  
16 these. The next section is name, rank, and  
17 serial number. Section B in --

18 MS. RUSSELL: Sharon?

19 MS. EULER: Yes.

20 MS. RUSSELL: Can we go back to your  
21 boxes here where you're checking?

22 MS. EULER: Uh-huh.

23 MS. RUSSELL: We were talking about  
24 funeral directors having to also do this.

25 MS. EULER: Yes.

1 MS. RUSSELL: So, would there be a box  
2 for a funeral director to check?

3 MS. EULER: If they are going to be a  
4 preneed agent, they just check the box as a  
5 preneed agent because they will need to  
6 register as a funeral director once the real  
7 forms come out.

8 MS. RUSSELL: No. I mean, they're  
9 already a licensed funeral director.

10 MS. EULER: Right.

11 MS. RUSSELL: Okay.

12 MS. EULER: They will still need an  
13 agent registration.

14 MS. RUSSELL: They're still going to  
15 need an agent registration?

16 MS. EULER: Yes.

17 MS. DUNN: So, do you think as we're  
18 talking about this, would it be helpful for us  
19 internally to know that they are a funeral  
20 director and going to be an agent?

21 MS. RUSSELL: Because they won't be  
22 taking the test.

23 MS. EULER: Well --

24 MS. DUNN: I know this is only  
25 temporary, so --

1 MS. EULER: -- I think that for our  
2 purposes right now, all we need to know is  
3 they're registering as an agent.

4 MS. RUSSELL: Couldn't you make a box  
5 that says funeral director/preneed agent?

6 CHAIRMAN: That's what I'm sitting here  
7 thinking.

8 MR. MAHN: And then agent only.

9 MS. RUSSELL: It would make it a  
10 little bit less -- I mean --

11 MS. EULER: We could.

12 MS. RUSSELL: I mean, I think it's --

13 MR. KRAUS: Well, I mean, you could  
14 put a question in that same area, "Are you  
15 also a funeral director, yes, no?"

16 MS. RUSSELL: Just something to  
17 indicate --

18 MS. DUNN: Right.

19 MS. EULER: Yeah, we can do that.

20 MS. RUSSELL: Okay.

21 MS. EULER: We'll just --

22 MS. RUSSELL: Sorry. I was thinking  
23 about --

24 MS. EULER: That's okay.

25 CHAIRMAN: That makes sense.

1 MS. DUNN: Yeah.

2 MS. EULER: Okay. We can do that.

3 MS. RUSSELL: And if I can clarify, we  
4 were just talking about if the funeral  
5 director says he never -- you know, there's  
6 ten funeral directors in the establishment,  
7 but only one of those funeral directors  
8 actually makes preneed, your advice would be  
9 only that guy would need to do this?

10 MS. EULER: Right.

11 MS. DUNN: Right.

12 MS. EULER: Right.

13 MS. RUSSELL: Okay. Thank you.

14 MS. EULER: The rest can if they want,  
15 but they don't have to.

16 MS. RUSSELL: If they want.

17 MS. EULER: Right. You were in --

18 MS. RUSSELL: I am so sorry.

19 MS. EULER: No. You reminded me of  
20 something else I meant to say about this. The  
21 other thing is that the applications for the  
22 agents would need to be submitted by -- and,  
23 again, I have October 31, but that date is up  
24 to the Board. And even if you haven't taken  
25 the Missouri Law, submit your application and

1       then supplement with the Missouri Law when  
2       you've got it done. So, you don't have to  
3       wait until you've taken the Missouri Law to  
4       submit your application.

5               MS. RUSSELL: The permanent  
6       application?

7               MS. EULER: Right.

8               MS. RUSSELL: The permanent  
9       application. Got you.

10              MS. EULER: Right. You need to submit  
11       your permanent application, but the Board  
12       won't act on it until you pass the Missouri  
13       Law, and that's just for this process.

14              MR. FRAKER: Yeah. But, once again,  
15       Sharon, those that are in the process now are  
16       in their internships or funeral director  
17       class, they're still going to have to have  
18       this.

19              MS. EULER: Yes.

20              MR. FRAKER: But are they going to be  
21       certified or whatever the word is?

22              MS. EULER: Registered.

23              MR. FRAKER: Registered, but after --

24              MS. EULER: Yes.

25              MR. FRAKER: You're not going to make



1       those that are apprenticing now take the test  
2       before December the 31st?

3               MS. EULER:   If they are going to sell  
4       preneed, they will need to take the test  
5       before December 31st.

6               MR. FRAKER:   Yeah.   But if they're in  
7       their apprenticeship classes, one that I'm  
8       thinking about, Darlene, she's --

9               MS. RUSSELL:   Oh, yeah.   They're  
10       currently serving an apprenticeship, but, see,  
11       their apprenticeship doesn't end before this  
12       goes into effect.

13               MS. EULER:   Right.

14               MS. RUSSELL:   They'll have to take the  
15       Law exam to take --

16               MS. EULER:   To continue to sell  
17       preneed.

18               MS. RUSSELL:   Preneed.

19               MS. EULER:   Unless they've taken the  
20       Law, they won't have to take it again --

21               MS. RUSSELL:   For the -- (inaudible.)

22               MS. EULER:   -- for their  
23       funeral-director license.

24               MR. FRAKER:   Okay.

25               MS. DUNN:   Well, when the new rule

1 passes.

2 MS. EULER: When the new rule passes.

3 CHAIRMAN: That's really interesting  
4 that we would allow an apprentice to take the  
5 Law test to be a preneed agent, but not a  
6 funeral director.

7 MS. DUNN: No, they can take --

8 MS. EULER: But when they register as a  
9 preneed agent, they can sell preneed. They're  
10 fully --

11 CHAIRMAN: I know, but if you were  
12 just an apprentice working through your  
13 apprenticeship, you would not be allowed to  
14 take that Law test until you had completed  
15 your apprenticeship.

16 MS. EULER: Yeah.

17 MS. RUSSELL: Yeah.

18 CHAIRMAN: So, now, we've made it  
19 available for them to do half of their testing  
20 before they've completed their apprenticeship  
21 to make them a preneed agent.

22 MS. EULER: Because it's -- yeah.  
23 That's true.

24 MS. DUNN: Well, then maybe that rule  
25 needs to be looked at.

1 UNIDENTIFIED: Yeah. There we go.

2 MS. EULER: But it's a different  
3 profession.

4 MR. SPEAKS: I hadn't thought of that.

5 MS. EULER: Yeah.

6 MS. DUNN: But you do have a rule  
7 pending that says once you've taken the  
8 Missouri Law successfully, you do not have to  
9 take it again.

10 MS. EULER: Uh-huh.

11 UNIDENTIFIED: True.

12 MS. RUSSELL: Now, and, Earl, you were  
13 saying this is going to be an emergency rule,  
14 so, hypothetically, I'm thinking that on  
15 August 28th, your office is going to get --  
16 (inaudible) -- with people. They will have it  
17 available to file even though the rule isn't  
18 in effect, so to speak; right?

19 MR. KRAUS: Right.

20 MS. EULER: Yeah.

21 MS. RUSSELL: That's what you're  
22 thinking?

23 MR. KRAUS: Yeah. The rule --

24 MS. EULER: Yes.

25 MR. KRAUS: We anticipate the rule --

1 the proposed rule would be filed on the 28th.

2 MS. RUSSELL: And you're thinking  
3 maybe next week --

4 MR. KRAUS: It wouldn't take -- it  
5 can't take effect until ten days after that.

6 MS. RUSSELL: Correct.

7 MS. EULER: Right.

8 MS. RUSSELL: But you're thinking  
9 sometime next week, they can actually download  
10 it and --

11 MS. EULER: As soon as we can get it  
12 approved by the Board and there's a process --

13 MR. KRAUS: As soon as it's approved  
14 and available.

15 MS. DUNN: The form process is kind of  
16 like the current 436 process. When I was  
17 telling Earl and Sharon, and they went, oh.  
18 So, we'll try to speed that along.

19 MS. EULER: It just -- I thought it  
20 was just a matter we need to formalize the  
21 form and copy it -- we can take it down to  
22 Kinko's and copy it, but apparently not, so --

23 MR. KRAUS: Yeah. There's a --  
24 (inaudible.)

25 MS. EULER: Yeah. So -- okay. So --

1 MS. RUSSELL: Go on.

2 MS. EULER: -- moving on to Section  
3 B, we ask just a few general questions. And  
4 on A, I would suggest we change that. Right  
5 now, it says have you ever had a professional  
6 license disciplined by another state or  
7 territory? I think we should say by any.

8 MS. RUSSELL: Any. There you go.

9 MS. EULER: Have you ever been finally  
10 adjudicated, blah, blah, blah, of a crime?  
11 Have you ever been arrested or charged with a  
12 crime?

13 MS. RUSSELL: Can I ask you a question  
14 about that one?

15 MS. EULER: Uh-huh.

16 MS. RUSSELL: Is the Board -- I guess,  
17 you're going to have to have -- if the office  
18 staff gets several of them that say yes to  
19 they've been found guilty of a crime, then  
20 those don't automatically go and get a  
21 registration; is that correct?

22 MS. EULER: They will go into the  
23 stacks, so when the license applications come  
24 in, they will be looked at first.

25 MS. RUSSELL: But they can go ahead and

1 operate?

2 MS. EULER: I don't think we can  
3 exclude anybody because it's not a license.

4 MS. RUSSELL: Okay. Okay.

5 MR. KRAUS: I mean, they do, also --  
6 to the extent this matters, they do also have  
7 to certify on the back that they are eligible  
8 for licensure. Now, they may say, well, yeah,  
9 I'm a felon, but, sure, I'm eligible. Okay.  
10 Well, we'll see you at --

11 MS. DUNN: Yeah. They go in the  
12 orphan stack.

13 CHAIRMAN: We'll see you when the  
14 application is decided on.

15 MS. RUSSELL: That was good, Becky.

16 CHAIRMAN: Of course, they may already  
17 be out there selling preneed now.

18 MR. FARROW: It seems with these,  
19 we're going to ask them have you ever been  
20 arrested for smoking pot in college, but we're  
21 not going to ask if you've ever been arrested  
22 for stealing preneed funds? You have the  
23 arrest question just on the drug and alcohol --

24 MS. EULER: No. Look at sub C.

25 MR. FARROW: -- and not -- huh?

1 MS. EULER: Look at sub C.

2 MR. FARROW: I am.

3 MS. EULER: Oh, wait.

4 MR. FARROW: That's drugs or alcohol.  
5 Notice of any drug or alcohol rules.

6 MS. EULER: Oh, you know what? You  
7 know what? One of them was supposed to be  
8 drugs and alcohol and one of them was not, and  
9 we got both of them drugs and alcohol --

10 MR. FARROW: Okay.

11 MS. EULER: -- because C and D are the  
12 same.

13 MS. RUSSELL: Yes.

14 MR. FARROW: Yes.

15 MS. EULER: And they shouldn't be.

16 MS. RUSSELL: Okay.

17 MR. FARROW: Okay. Second, I've got --

18 MS. EULER: Just take out the drug or  
19 alcohol --

20 MS. RUSSELL: On the C?

21 MS. EULER: -- on the C.

22 MR. FARROW: And I am not an attorney,  
23 but can we ask folks have you ever been  
24 arrested if they weren't convicted? I mean,  
25 can we hold that against them?

1 MS. EULER: Yes. We can ask.

2 MR. FARROW: Will it be held against  
3 them?

4 MS. EULER: We can ask if they've ever  
5 been arrested. Let me get that real quick.

6 MR. KRAUS: Yeah. And a lot of the  
7 different boards are -- have different wording  
8 on how they ask that question. Some ask just  
9 for pled guilty or convicted, some go further  
10 and say charged, some go even further and ask  
11 arrested. And I've talked about that with a  
12 number of the different boards, and while I  
13 agree with you that I don't think the fact  
14 that you've been arrested can be held against  
15 you, because that's just an arrest, it doesn't  
16 mean anything.

17 MR. FARROW: Yeah.

18 MR. KRAUS: But I think that that can  
19 lead the Board to do further inquiry and find  
20 out what's the status of that arrest, did that  
21 lead to any kind of charges that they're not  
22 aware of, or any guilty pleas or convictions  
23 that they're not aware of, because maybe they  
24 were arrested ten years ago and maybe there's  
25 currently a warrant out for them or something



1       that the Board would want to know about. As  
2       to whether they hold it against them or not is  
3       -- I think is another question.

4               MS. EULER: Well, and the --

5               MR. SPEAKS: Here's what I think that  
6       does for you. Just as an example, suppose a  
7       person has been arrested for embezzling funds  
8       at some point. They have been arrested for  
9       that. It never went to trial because they  
10      couldn't gather enough evidence to make it  
11      stick, and finally, you know, a prosecutor  
12      says, you know, forget it. But if the person  
13      is sworn, you know, there's a sworn statement  
14      --

15              MS. EULER: Right.

16              MR. SPEAKS: -- that says they do have  
17      to answer yes to that, if you're compiling a  
18      case against somebody, because the whole point  
19      of this was to protect the public.

20              MS. EULER: Right.

21              MR. SPEAKS: I think that gets you  
22      where you need to be.

23              MS. EULER: Right. Well --

24              MR. SPEAKS: You know, his question  
25      really had maybe more to do with, well, is

1 half of his crew suddenly ineligible.

2 (Several people talking simultaneously.)

3 MR. FARROW: I have one gentleman.

4 MS. EULER: It doesn't make you  
5 ineligible, but let me read to you some of the  
6 causes for discipline or denial that may be  
7 relevant --

8 MR. FARROW: Okay.

9 MS. EULER: -- that an arrest may lead  
10 us to. Use of any controlled substance or  
11 alcoholic beverage that impairs a person's  
12 ability to perform the work of a profession  
13 licensed or regulated by this chapter. You've  
14 been arrested for DUI; maybe. Use of fraud,  
15 deception, misrepresentation in securing a  
16 certificate of registration, permit, or  
17 license; definitely, if you lie to us about  
18 this. Obtaining or attempting to obtain  
19 fee-charged tuition or other compensation by  
20 fraud, deception, or misrepresentation; there  
21 may not be enough for a criminal case, but  
22 there may be enough for us to get discipline  
23 on that. Incompetency, misconduct, gross  
24 negligence, fraud, misrepresentation or  
25 dishonestly in performance of functions of

1 duties; there might be that. Impersonation of  
2 a person holding a certificate of authority.  
3 Enabling another person to practice or offer  
4 to practice who is not currently licensed.  
5 Issuance of a certificate of license, permit,  
6 or a registration based upon a material  
7 mistake of fact. Violation of professional  
8 trust or confidence. Use of advertisement or  
9 solicitation, false, misleading, or deceptive  
10 to the general public. Violation of any of  
11 the provisions of Chapter 193 or 194.  
12 Willfully and through undue influence, selling  
13 a funeral. All of those things are things  
14 that criminal charges may alert us to conduct.

15 MR. FARROW: Can I give you an example  
16 and you tell me whether you think you would  
17 deny this person?

18 MS. EULER: No.

19 MR. FARROW: I have a gentleman -- you  
20 can nod. I have a gentleman who works for  
21 me, he's worked for several other folks. Ten  
22 years ago, he was involved in a drug crime.  
23 All right. He's a licensed insurance agent.  
24 He goes to NA meetings, he doesn't use drugs  
25 whatsoever. It was ten years ago. He's

1 already in the business. Do I have to fire  
2 him? In this economy, do I have to tell a  
3 gentleman that's worked hard for ten years he  
4 can't be licensed?

5 MS. EULER: I will tell you that the  
6 Board's charge is to consider each of those  
7 matters on a case-by-case basis. And, you  
8 know, it's a Board decision whether to license  
9 him or not. And I am not going to speak for  
10 this Board or speak to whether, yes, the Board  
11 will give a license or not. But all of the  
12 things you listed would be mitigating factors  
13 that the Board would consider in its decision.  
14 The Board has discretion as to whether it  
15 gives a license or not, so, you know, is it  
16 an automatic denial? No, it's not an  
17 automatic denial. Is it something he should  
18 disclose and explain in his application?

19 MR. FARROW: Oh, absolutely.

20 MS. EULER: Absolutely.

21 MR. KRAUS: And I think, too, going  
22 back to your initial question about arrests,  
23 is there's an important difference there as to  
24 what evidence the Board would have to put on  
25 if a denial is challenged in that if, let's

1 say, the Board is basing the denial or, I  
2 guess, the discipline on a conviction or a  
3 guilty plea, they have to show that there was  
4 that conviction or guilty plea, and that's a  
5 fairly straightforward case evidentiarywise.  
6 But if they're basing it on information  
7 obtained as a result of finding out about an  
8 arrest, they can't just prove the person was  
9 arrested.

10 MS. EULER: Right.

11 MR. KRAUS: They have to prove the  
12 actual underlying conduct for which the person  
13 was arrested, which is a lot more complicated  
14 case to put on, especially years and years  
15 after the fact.

16 MS. EULER: Uh-huh.

17 MR. KRAUS: But that's what they would  
18 have to show, so that's a pretty big  
19 difference for the Board.

20 MR. FARROW: And then, I guess, one  
21 question is -- (inaudible) -- as much as  
22 anything. On most of these that I've seen  
23 from other states, they'll usually put a title  
24 in it, or I call it a statute of limitations  
25 even though that's not a correct term for

1       this, but ten years, or, you know, they'll go  
2       back to a certain period of time. But, you  
3       know, it just seems -- it seems we're holding  
4       these folks to a pretty tough standard, where  
5       they should be especially when it comes to  
6       theft, embezzlement, things like that.

7               MS. EULER: Uh-huh.

8               MR. FARROW: But a guy with a DUI  
9       quite some time ago, you know, whether -- it  
10      seems kind of arbitrary whether the Board will  
11      decide whether that person should be granted a  
12      license or not.

13              MS. EULER: Uh-huh. And, you know,  
14      some Boards do have time limits and --

15              MR. KRAUS: Some do, particularly with  
16      regard to renewals.

17              MS. EULER: Uh-huh.

18              MR. KRAUS: Like, if they renew every  
19      two years, they'll say during the last two  
20      years because they don't want to rehash  
21      everything that they've already talked about.

22              MS. EULER: Uh-huh.

23              MR. KRAUS: I know what some boards  
24      have run into, if it's just on a regular  
25      application, if it just says the last two

1 years and then describe. Let's say they've  
2 had one DUI or DWI during that time period, so  
3 they say yes and they describe that one. But  
4 since they've had five others every two years  
5 back, they don't divulge those because it says  
6 just during the last two years. So, then the  
7 Board doesn't get a full picture of what  
8 they're really talking about. So, I mean,  
9 that's kind of both sides of that.

10 MR. FARROW: And let me say this: Not  
11 pro drugs, not pro any of those things.

12 MS. EULER: Well, but sometimes people  
13 make choices.

14 MR. FARROW: But, you know, it seems  
15 -- and I understand holding funeral directors  
16 to a certain standard because they're around  
17 chemicals and things like that. A preneed  
18 person, I understand holding them accountable  
19 when it comes to their fiduciary  
20 responsibility, but, you know, a DUI five  
21 years ago or three years ago, even, we are  
22 talking about people's livelihoods.

23 MS. EULER: Uh-huh. Right. Right.

24 MR. FARROW: Especially the ones that  
25 already have licenses. That's really where my

1 concern is.

2 MR. KRAUS: And I think the sections  
3 that Sharon was referring to earlier that  
4 these could relate to do include language  
5 that, as it relates to the duties of that  
6 licensee, not just are you a good or bad  
7 person, I guess.

8 MS. EULER: Right.

9 MR. KRAUS: And I know each of the  
10 boards that I deal with, they look at that a  
11 little bit differently. Like, as they relate  
12 to DWIs, some professions care about that a  
13 lot, and others not as much, you know.  
14 Accountants are different than tattooists, are  
15 different than cosmetologists as to how they  
16 look at that, so --

17 MS. EULER: So, I think the  
18 bottom-line answer to your question is tell  
19 your guy to send in his application, be  
20 truthful and honest with the Board, tell them  
21 what's gone on and why he should get a license.

22 MS. RUSSELL: But he'll still be able  
23 to operate on August 28th --

24 MS. EULER: Uh-huh. Yeah.

25 MS. RUSSELL: -- until he has to send



1 in his permanent application.

2 MS. EULER: Right.

3 MS. RUSSELL: Got you.

4 MR. KRAUS: And then until the Board  
5 accepts or denies that application.

6 MS. RUSSELL: Yeah. The Board won't  
7 be doing any denying of applications until  
8 that time --

9 MS. EULER: Right.

10 MS. RUSSELL: -- when the permanent  
11 application actually comes in.

12 MS. EULER: Right. Right.

13 MR. KRAUS: Until they receive it,  
14 yeah.

15 MS. RUSSELL: Right.

16 MR. FARROW: And is there something in  
17 here that speaks to an appeals process in case  
18 there are denials?

19 MS. EULER: There won't be any denial  
20 of this. This is you send it in --

21 MR. FARROW: No, I don't mean this. I  
22 mean, if the Board --

23 MS. EULER: With the form -- with the  
24 permanent application?

25 MR. FARROW: Uh-huh.

1 MS. EULER: Yeah. That all is an  
2 administrative process. Okay.

3 MS. DUNN: There's a whole explanation  
4 that we provide if we deny anything.

5 MS. EULER: Yeah. Yeah. Basically,  
6 you go to the AHC and then it goes to circuit  
7 court and then the appellate court process.  
8 Okay. Moving on. Section C, this information  
9 for a corporation to list a registered agent,  
10 and the name of the person in charge of the  
11 business. And then sub D is if you will be  
12 applying for licensure as a preneed seller,  
13 circle the type of funding you plan to use,  
14 and we haven't changed that from licensure to  
15 if you intend to apply.

16 MR. SPEAKS: Should it say circle all  
17 that apply?

18 MR. STALTER: Yeah. All that --

19 MS. EULER: Yeah. Yeah.

20 MS. RUSSELL: It says -- (inaudible.)

21 UNIDENTIFIED: (Inaudible.)

22 MS. EULER: Yeah. Yeah. And then  
23 list the names of who you're using as your  
24 trustee or insurance companies. If you're  
25 applying for registration as a preneed sales

1 agent -- and that should be just preneed agent  
2 -- please list all preneed sellers. And then  
3 this is -- Darlene, this kind of goes to what  
4 you were going. Please list all licenses and  
5 members currently held that are issued by the  
6 State Board.

7 MS. RUSSELL: Okay.

8 MS. EULER: So, maybe we don't need a  
9 separate check for that.

10 MS. RUSSELL: Well, or just something  
11 that -- I still think it will be less  
12 confusing for the number of calls you'll get  
13 in here --

14 MS. EULER: Okay.

15 MS. RUSSELL: -- if you put -- if you  
16 call it a preneed sales agent/funeral director  
17 because, hopefully --

18 MS. EULER: Okay.

19 MS. RUSSELL: -- Becky knows the  
20 mentality will be -- you know.

21 MS. EULER: Yeah, I know.

22 MS. RUSSELL: I'm not --

23 MS. DUNN: Just to add that category.

24 CHAIRMAN: And it'll actually help in  
25 the sorting --

1 MS. EULER: Yeah.

2 CHAIRMAN: -- to know who, because,  
3 otherwise, you're going to have to go back and  
4 compare licenses, like, even though it says  
5 that.

6 MS. EULER: Yeah.

7 MR. STALTER: Licenses and  
8 registrations? A lot of these guys think they  
9 already --

10 MS. EULER: Just licenses.

11 MR. STALTER: Just licenses? Okay.

12 MS. EULER: We don't care if they  
13 currently have a registration or not.

14 MS. RUSSELL: Right.

15 MS. EULER: And I know that's one of  
16 the things we're going to have really hit on  
17 education.

18 MR. STALTER: They'd argue with you.  
19 I've got one.

20 MS. EULER: Well, and, you know, the  
21 approach that we need to take with this is,  
22 this is not a change in the law, this is a  
23 new law.

24 MS. RUSSELL: Exactly.

25 MS. EULER: Because it really is.

1           MR. STALTER: I know. You're  
2 preaching to the choir.

3           MS. EULER: Yeah. Okay.

4           MR. KRAUS: I assume under E will also  
5 be if you intend to.

6           MS. EULER: Yes.

7           MR. KRAUS: Okay.

8           MS. EULER: If you intend to.

9           MS. RUSSELL: Where was that, Earl?

10          MR. KRAUS: On E.

11          MS. EULER: On E.

12          MR. KRAUS: Under --

13          MS. EULER: On subsection -- here.

14          MS. RUSSELL: Oh, okay.

15          MR. KRAUS: Yeah. We kind of go D, E,  
16 F, and then F again.

17          MS. EULER: Yeah. That's because she  
18 had a bad typist. Okay. And then the last  
19 section, which should be G, is the affidavit  
20 of the applicant. I, so-and-so -- and if  
21 you're a corporation, list your title -- swear  
22 I've personally completed the application,  
23 everything is true and correct. While I am  
24 subject to criminal penalties, to the best of  
25 my knowledge, I am eligible for license or

1 registration. And if I am signing on behalf  
2 of a corporation or other entity, that I have  
3 full authorization to sign on behalf of the  
4 entity, and then it's notarized.

5 MS. DUNN: Sharon, would you describe  
6 under C -- I know this is a term --  
7 registered agent.

8 MS. EULER: Yes.

9 MS. DUNN: This is not an agent of  
10 preneed.

11 MS. EULER: No. This is who is your  
12 registered agent with the Secretary of State.

13 MS. DUNN: Yeah. And it's the  
14 language --

15 MS. EULER: When you form your  
16 corporation, you're required --

17 MS. DUNN: It's in Senate Bill 1, too,  
18 I think.

19 MS. EULER: Yeah. You're required to  
20 have a registered agent within the state.

21 CHAIRMAN: So, if I go pull my  
22 registration up, there is on that registration  
23 somebody listed as the registered agent.

24 MS. EULER: Yes. Yes.

25 CHAIRMAN: Okay.

1 MS. EULER: If you go to the Secretary  
2 of State's Web site and pull up the corporate  
3 entity, it will say registered agent,  
4 so-and-so.

5 MS. DUNN: So, it has nothing to do  
6 with a preneed agent?

7 MS. EULER: No.

8 MR. KRAUS: But if you think that's  
9 confusing, we could say with the Secretary of  
10 State there.

11 MS. DUNN: I think we should.

12 MS. RUSSELL: Yeah.

13 MS. DUNN: I mean, I questioned it in  
14 Senate Bill 1, not knowing which sections I  
15 was in at points.

16 MS. EULER: Okay.

17 MS. RUSSELL: Yeah. It makes sense.

18 MR. KRAUS: Then they could start  
19 getting calls about how do I get registration  
20 with the Board of Embalmers?

21 MS. EULER: Yeah. Or people will  
22 actually look at it and go, they haven't been  
23 with me for ten years, or, oh, that was my  
24 lawyer. I think he died.

25 CHAIRMAN: So, give me an example of

1 the registered agent with the SOS versus the  
2 person in charge of the business.

3 MS. EULER: Usually, it's the lawyer  
4 who forms the corporation or --

5 MR. KRAUS: And there are some  
6 companies that the service they provide is  
7 being the registered agent, on CT corporations.

8 MS. EULER: Like CT corporations.

9 MR. KRAUS: In St. Louis, they are the  
10 registered agent for a bunch of different  
11 companies. They accept service, they forward  
12 correspondence, all kinds of stuff.

13 (Several people talking simultaneously.)

14 MR. STALTER: Your articles of  
15 incorporation will set it out, and then, after  
16 that, you can amend it, but it would be a  
17 filing with the Secretary of State's office.

18 MS. EULER: Right. Right.

19 MR. KRAUS: And since they are  
20 separately -- (inaudible) -- there has to be  
21 someone to go to.

22 MS. EULER: Someone to serve. Your  
23 registered agent is, basically, who you serve  
24 for a lawsuit or official notice. Okay. Does  
25 anybody have any questions, comments? Does



1 this work?

2 MS. RUSSELL: That makes more sense.

3 MS. EULER: Huh?

4 MS. RUSSELL: That makes a lot more  
5 sense now.

6 MS. EULER: Okay. Good. Does the  
7 Board want to --

8 CHAIRMAN: Vote on it?

9 MS. DUNN: Yeah.

10 MS. EULER: -- vote -- approve it with  
11 the changes?

12 CHAIRMAN: With the changes made?

13 MR. KRAUS: You'll notice, too, that  
14 there isn't anything on here about House Bill  
15 600 or Senate Bill 30 because this is not a  
16 license, it's not an application for a  
17 license, so those provisions don't apply to  
18 this. They will apply to the application  
19 that's ultimately filed after this form.

20 MS. EULER: Right.

21 MS. DUNN: And for those who don't  
22 know those terms, those happen -- that deals  
23 with tax compliance.

24 CHAIRMAN: All right. Any concerns?

25 MS. RUSSELL: If you call that a

1 temporary permit, did I just hear you say,  
2 Earl?

3 MS. EULER: Yes.

4 MS. RUSSELL: Temporary permit is the  
5 terminology you're calling this?

6 MS. EULER: Yes.

7 MR. KRAUS: That's the best thing  
8 we've been able to come up with to call it.

9 MS. RUSSELL: That sounds -- that's  
10 probably the best -- yeah.

11 MS. EULER: Yes. It's not a license.  
12 It's just -- it's your olly olly oxen free  
13 until you get your application on file.

14 MS. RUSSELL: Temporary permit.

15 MR. KRAUS: It's your notice of intent  
16 to apply.

17 MS. EULER: And this means, though, if  
18 you file this and you steal \$600 million  
19 between now and October 31, we're still going  
20 to come after you, but we won't come after you  
21 for unlicensed activity, we'll just come after  
22 you for stealing \$600 million.

23 MS. RUSSELL: Perfect.

24 MR. KRAUS: So, you get a break.

25 MS. EULER: You get a break.

1           CHAIRMAN:   So, I'll entertain a motion  
2   that we approve this with the corrected  
3   changes.

4           MS. RUSSELL:   You've got to get Jim  
5   back in, don't you?

6           MS. EULER:   Are you okay?   Are you  
7   okay with the dates?

8           MS. DUNN:   Well, the only thing on  
9   here was do you all want October 31st.

10          MS. EULER:   Is the Board okay with the  
11   dates?

12          MR. FRAKER:   If it meets with you guys.

13          MS. EULER:   I'll go with it.

14          MR. KRAUS:   Okay.

15          MS. DUNN:   Yeah.   We're going to have  
16   a Board subcommittee helping us, so --

17          CHAIRMAN:   So, you're okay with that?

18          MR. MAHN:   Yes.

19          MS. EULER:   Do you want to do that  
20   now?   Do you want to create a Board  
21   subcommittee to help with the processing of  
22   license applications?

23          CHAIRMAN:   Oh, I'm sure we're going to  
24   by those eyes.

25          MS. EULER:   Well, you could do that

1 now while you're talking about it, if you  
2 wanted to, or you could wait.

3 MR. MAHN: We probably ought to wait  
4 and see who we've hired, that way we can put  
5 them behind the desk for a while.

6 CHAIRMAN: What is the process for  
7 creating a Board subcommittee other than --

8 MS. EULER: Have somebody move that we  
9 create a Board subcommittee and decide who you  
10 want to be on it.

11 MR. MAHN: I say we wait and see who  
12 we hire, Chairman.

13 CHAIRMAN: Before we have a Board  
14 subcommittee?

15 MR. MAHN: Well, they could push the  
16 paperwork through.

17 MS. DUNN: Well --

18 MR. MAHN: But it would cost more to  
19 put -- (inaudible.)

20 CHAIRMAN: I think the executive  
21 director is expecting that Board subcommittee  
22 to go this one is a funeral director and this  
23 one isn't, and this one goes in this pile.

24 MS. DUNN: You can decide on that next  
25 year.

1           MR. KRAUS:   What I envision the  
2       subcommittee is doing is -- of course, their  
3       ultimate responsibility is to make  
4       recommendations to the Board as to grant/deny,  
5       grant/deny.

6           MS. DUNN:   Right.

7           MS. EULER:   Right.

8           MR. KRAUS:   As to who goes through the  
9       paperwork is between, I guess, the staff and  
10      the chair.

11          MS. DUNN:   Right.

12          MS. EULER:   Right.

13          MS. DUNN:   Or we can wait till you're  
14      out for some week and --

15          MR. KRAUS:   But the committee is going  
16      to have to look at each and all -- each --  
17      all the paperwork once it's put together and  
18      make recommendations -- decisions on  
19      recommendation.

20          MS. RUSSELL:  A lot of boards have  
21      those.  A lot of boards work together.

22          MS. EULER:   Uh-huh.

23          MR. KRAUS:   Yeah, a lot of them do.

24          CHAIRMAN:   Will that require any kind  
25      of numbers?

1 MR. KRAUS: That way, everyone doesn't  
2 have to look at every piece of paper.

3 CHAIRMAN: Like, it has to be -- the  
4 subcommittee has to be two people or --

5 MS. EULER: No. You can do whatever  
6 you want.

7 CHAIRMAN: So, Gary is going to come  
8 up here and do it by himself?

9 MR. FRAKER: (Inaudible.)

10 MR. MAHN: Well, he's raised his hand  
11 up.

12 CHAIRMAN: He raised his hand.

13 MR. MAHN: He wants it bad.

14 MR. FRAKER: It's been suggested to me  
15 that there are three Board members not  
16 currently in this room, and they would -- I'm  
17 sure they would be honored to serve.

18 MR. MAHN: I second that.

19 MR. KRAUS: You know, if you're not  
20 here, you get on committees.

21 MR. MAHN: Motion, Chairman.

22 CHAIRMAN: Take that back.

23 MS. EULER: Well, you know, actually,  
24 having the public member on the subcommittee  
25 might not be a bad idea.

1 MS. RUSSELL: Usually, the chairman  
2 sometimes does that, too. Chairman and public  
3 member.

4 MS. DUNN: Yeah, Chairman.

5 MR. STALTER: Who asked you?

6 MS. RUSSELL: Be nice.

7 CHAIRMAN: Hey, I'm okay.

8 MS. DUNN: Okay. Well, we'll work on  
9 that.

10 CHAIRMAN: We'll work on that, so --  
11 can we do this?

12 MS. EULER: Yes.

13 MS. DUNN: Yes.

14 CHAIRMAN: All right.

15 MS. DUNN: Motion?

16 CHAIRMAN: Motion?

17 MR. FRAKER: Yes.

18 CHAIRMAN: Gary did the motion.

19 MR. MAHN: Second.

20 CHAIRMAN: He did the two. And I say  
21 yea or nay, or just say you're okay?

22 MS. DUNN: Yes. You --

23 MS. EULER: And then, Becky, we can  
24 get it formalized and you can get it started  
25 in the process.

1 MS. DUNN: Yes.

2 MS. EULER: So we can get it up and  
3 ready to go.

4 MS. DUNN: Yes. Their motion was to  
5 approve and receive.

6 CHAIRMAN: So, that takes care of  
7 that. Done.

8 MS. EULER: Done.

9 CHAIRMAN: Next.

10 MR. KRAUS: Next. Do you want to move  
11 to the handouts? Within the handouts, there  
12 are three other handouts. One is proposed  
13 emergency rule for notice of intent to apply,  
14 the next one is emergency rules for group one  
15 following 8/5/09 meeting, the third one is  
16 group-two rules which are from the last  
17 meeting. The first one, proposed emergency  
18 rule for notice of intent to apply, the Board  
19 has looked at and I think we made some slight  
20 adjustments to it. I forget what it was, but  
21 this is the most recent draft.

22 MS. EULER: We need to change the  
23 dates.

24 MR. KRAUS: The dates, we were going  
25 to talk about.



1 MS. EULER: Well, the Board just voted  
2 for sub 5 to be October 31.

3 MR. KRAUS: Right. Okay.

4 MS. EULER: As opposed to October 1.  
5 And then the other date stays December 31,  
6 which is on here.

7 MR. KRAUS: Okay. Which is consistent  
8 with the form; right?

9 MS. EULER: Uh-huh. Yes.

10 MR. KRAUS: So, unless there are other  
11 comments or changes needed, then I don't know  
12 that we need to do much more on this one.

13 MS. EULER: The Board needs to finally  
14 approve this and to make a finding that  
15 substantial evidence supports the need for the  
16 rule.

17 MR. KRAUS: So, you would recommend a  
18 motion to that effect?

19 MS. EULER: I would recommend that  
20 someone move that there is substantial  
21 evidence to support the filing of this rule,  
22 that there is a need for it, and a motion  
23 that staff be directed to get this rule ready  
24 to file on August 28th.

25 MR. KRAUS: On an emergency basis.

1 MS. EULER: On an emergency basis.

2 MR. KRAUS: And that way, they would  
3 be in compliance with Chapter 536.

4 MS. EULER: Correct.

5 CHAIRMAN: So, I will entertain that  
6 motion.

7 MR. MAHN: First.

8 MR. FRAKER: Second.

9 CHAIRMAN: Okay. Third.

10 MS. EULER: All in favor?

11 CHAIRMAN: All in favor? Done.

12 MS. RUSSELL: Could I ask you one more  
13 question about the notice of intent?

14 MS. EULER: Uh-huh.

15 MS. RUSSELL: I'm just anticipating  
16 what other question might come up.

17 MS. EULER: Sure.

18 MS. RUSSELL: Does the Board  
19 anticipate giving just a reply back; otherwise  
20 -- saying that we have received your notice of  
21 intent to apply?

22 MR. KRAUS: Not at this time.

23 MS. EULER: No. What I would do --

24 MS. RUSSELL: So, she'll get all the  
25 calls.

1 MS. EULER: Fax it. Fax it or send it  
2 by some sort of mail so you have a receipt.

3 MS. RUSSELL: Okay.

4 MS. DUNN: E-mails would be great.

5 MS. EULER: E-mail it.

6 MS. RUSSELL: E-mail it; that way,  
7 they have a record of it.

8 MS. DUNN: And we have asked for the  
9 e-mail on these, haven't we?

10 MR. STALTER: Yeah.

11 MS. EULER: Uh-huh.

12 MS. DUNN: Yeah.

13 MS. RUSSELL: Okay.

14 CHAIRMAN: Is it possible to go  
15 on-line and just fill that out and zap it?

16 MR. KRAUS: Well, I don't think we  
17 have it as a fillable form, no.

18 CHAIRMAN: Oh, yeah.

19 MR. STALTER: You still have to have a  
20 signed copy, too, don't you?

21 MS. EULER: Yeah. And then follow up  
22 with a signed copy in the mail, but it will  
23 be deemed filed --

24 MR. KRAUS: But you could scan and  
25 send it pdf if you wanted.

1 MS. EULER: Yeah.

2 MR. KRAUS: And follow up with --

3 MS. EULER: Sub 2 says you may file by  
4 hand delivery, mail, fax, or other electronic  
5 means such as e-mail, so --

6 MR. STALTER: But they can fax it or  
7 e-mail it, but then you still want a signed  
8 copy -- a hard copy?

9 MS. EULER: Right.

10 MS. DUNN: Yes.

11 MS. EULER: Follow up with the hard  
12 copy, but it will be deemed filed when that  
13 electronic file hits the Board.

14 MS. RUSSELL: Okay. Thank you.

15 MS. EULER: Do you want to set up a  
16 separate e-mail for people to e-mail that to?

17 MS. DUNN: Well, we have prebalm now,  
18 so we can include that on the form.

19 MS. EULER: Okay. Okay. Should we  
20 add that to the form?

21 MS. DUNN: Yes.

22 MS. EULER: Then we need to make that  
23 note. Perhaps the chair would like to  
24 entertain a motion that the notice-of-intent  
25 form be amended to provide the Board's e-mail

1 address, and notice that people can file it by  
2 electronic submission.

3 CHAIRMAN: I would entertain that  
4 motion.

5 MR. FRAKER: I'll make that motion.

6 CHAIRMAN: Gary makes the motion.

7 MR. MAHN: Second.

8 CHAIRMAN: Todd seconds. All in  
9 favor? Yes.

10 MR. FRAKER: Aye.

11 MR. MAHN: Aye.

12 MR. KRAUS: Followed by original  
13 intent?

14 MS. EULER: Yeah.

15 MR. KRAUS: All right. The next  
16 emergency rules for group one following 8/5/09  
17 meeting. A number of draft rules here. There  
18 are some comments with those, too, as they  
19 were being drafted.

20 MS. EULER: All right. Okay. Did we  
21 receive any comments from the public about  
22 these rules?

23 MR. KRAUS: I don't -- none that I  
24 recall at the moment. I don't know how you  
25 want to --

1 MS. EULER: Let's just start with them.

2 MR. KRAUS: Do you have any preference  
3 on how you go through these? We'll start with  
4 the first one.

5 CHAIRMAN: Works for me.

6 MR. KRAUS: It looks like I raised a  
7 comment there. Let me see what it was.

8 MS. EULER: Yeah. The Board currently  
9 has a rule to this effect. Would it be  
10 advisable to amend the existing rule rather  
11 than replace it with a new rule? It's on  
12 page 31, rule 20 C.S.R 2120-2.050. Do you all  
13 have law books there? There were some.

14 MR. STALTER: I've got one, yeah.

15 MS. RUSSELL: What was the section?

16 MS. EULER: It's on page 31.

17 MR. KRAUS: All licensees may be  
18 represented before the Board. Of course, it  
19 doesn't really say that you're a separate  
20 legal entity that you have to be.

21 MS. EULER: Correct. But what I'm  
22 wondering is if we should just simply amend  
23 this rule as opposed to doing a totally new  
24 rule.

25 MR. KRAUS: Oh, just amend that. That

1       seems to make sense to me.

2               MR. STALTER:   It'll be less confusing.  
3       If you have two rules out there --

4               MS. EULER:    Yeah.

5               MR. STALTER:   And what's the emergency  
6       need for the corporate representation anyway?

7               MR. KRAUS:    I don't know if there is  
8       one.

9               MS. EULER:    The -- what I see as the  
10       emergency need for it is once we get into the  
11       grant-denial process, if the board denies a  
12       license to a corporate entity, until we can  
13       get the full rules done, we may have an issue  
14       there with somebody who comes in and wants to  
15       represent their corporation.

16               MR. STALTER:   Yeah.   We won't be  
17       granting or denying it till some point after  
18       October 31st.

19               MS. EULER:    Right.

20               MR. STALTER:   So --

21               MS. EULER:    But the --

22               MR. KRAUS:    Regular rules won't go  
23       into effect for a long time.

24               MS. EULER:    Yeah.   Like, a year.   Or  
25       maybe we do an emergency rule to supersede the

1 existing rule and then we do a formal rule?

2 MR. KRAUS: Well, and, actually, if  
3 you make changes to a rule that changes more  
4 than 50 percent of the rule, you have to  
5 rescind and repromulgate anyway, which is what  
6 we could do here since it's a pretty short  
7 rule.

8 CHAIRMAN: So, which one makes more  
9 legal sense?

10 MR. KRAUS: You mean, whether it's  
11 emergency or regular?

12 CHAIRMAN: Or to rescind and --

13 MR. KRAUS: Well, I don't think that's  
14 actually our choice. I think once you change a  
15 certain amount of it, you have to rescind and  
16 repromulgate.

17 MS. EULER: Uh-huh.

18 MR. KRAUS: You don't get to choose  
19 whether you do that or not.

20 CHAIRMAN: Okay.

21 MR. KRAUS: So, I don't think that's a  
22 decision the Board needs to make.

23 CHAIRMAN: So, I heard something about  
24 50 percent and it's bigger than that or  
25 whatever?



1           MR. KRAUS: I think, depending on how  
2 much of this language we include, and I  
3 suspect we'll need to rescind and repromulgate  
4 anyway.

5           MS. EULER: Yeah.

6           CHAIRMAN: So, based upon that, is it  
7 an emergency then or not from the legal point  
8 of view?

9           MR. KRAUS: (Inaudible.)

10          MS. EULER: Not necessarily.

11          CHAIRMAN: I know embalming is  
12 important in the first 24 hours, but I don't  
13 know about this.

14          MS. EULER: Okay.

15          (Several people talking simultaneously.)

16          MR. KRAUS: I kind of think that this  
17 is the law, but the rule clarifies it for  
18 everybody.

19          MS. EULER: Yeah.

20          MR. KRAUS: So, I don't know if that's  
21 that much -- it's certainly not as much of an  
22 emergency as some of the others.

23          MS. EULER: Right. I agree with that.

24          CHAIRMAN: Okay. So, do we just scrap  
25 it? Your advice would be just to scrap it

1       for later?

2               MR. KRAUS:   Well, I think we could --  
3       I mean, we're drafting some of the rules now,  
4       too, it's just drafting them as regular rules.

5               MS. EULER:   I think that we should put  
6       this as a regular rule.   I do have an edit  
7       for it, though.   In subparagraph 1, I think we  
8       should take out "regarding denial or  
9       discipline of the license," and just put a  
10      period there.   I don't think we want to limit  
11      it.

12              MR. KRAUS:   I wonder if we need sub 2  
13      at all, because why do we need to say what an  
14      individual can do?   Or -- well -- or I guess  
15      sub 1 or sub 2.

16              MS. EULER:   Well, have we had  
17      situations where -- I don't think you need to  
18      be an attorney to file a citizen complaint,  
19      even if you were filing on behalf of a  
20      corporation, so I don't think we need sub 2 at  
21      all.

22              CHAIRMAN:   At the expense of sounding  
23      hateful, if it's not going to be an emergency  
24      rule, why don't we just go on?

25              MS. EULER:   Well, because we're almost

1 done with it.

2 CHAIRMAN: Okay. Just making sure.

3 MS. EULER: We're three-quarters of  
4 the way through.

5 CHAIRMAN: Okay.

6 MR. MAHN: On the first paragraph.

7 MS. EULER: Yeah.

8 MR. KRAUS: Well, since we're going to  
9 have quite a few changes to this, why don't --  
10 and it's going to be a regular rule and we're  
11 going to be rescinding this rule --

12 MS. EULER: We'll just redo it.

13 MR. KRAUS: -- why don't we come back,  
14 play with it, bring it back to the Board and  
15 talk about it later.

16 MS. EULER: Okay.

17 MS. DUNN: Okay.

18 MR. KRAUS: It's going to be quite a  
19 bit different. All right. The second one,  
20 payment is not a determining factor of  
21 practice of funeral directing.

22 MS. EULER: This, again, is not needed  
23 as an emergency rule that I see.

24 CHAIRMAN: The question that I have  
25 that since I brought up the little thought of

1       -- I better explain it -- the fact that we  
2       are going to be licensing apprentices that  
3       haven't completed their apprenticeship and  
4       some of that with half of their --

5               MS. EULER: We are going to be  
6       registering them --

7               CHAIRMAN: Well, okay.

8               MS. EULER: -- as preneed sales agents  
9       if they want to sell preneed.

10              CHAIRMAN: Okay.

11              MR. FRAKER: So, why would they not go  
12       ahead and take the test -- (inaudible) --  
13       right through the apprenticeship, get their  
14       license -- or, you know, they pass their test.

15              MS. EULER: Their registration.

16              MR. FRAKER: -- they're getting their  
17       agent certificate --

18              MS. EULER: They can do that.

19              CHAIRMAN: All right.

20              MR. FRAKER: At least they have a test  
21       out of the way.

22              MS. EULER: Right.

23              CHAIRMAN: But do we need --

24              MR. KRAUS: But that doesn't speed  
25       them up getting their funeral-director's

1 license.

2 MS. EULER: Right.

3 MR. FRAKER: Yeah. They've still got  
4 to serve their apprenticeship, but not --

5 MR. KRAUS: Yes.

6 CHAIRMAN: But just making it clear to  
7 those folks, to some extent, that didn't --

8 MR. STALTER: Do a third --  
9 (inaudible.)

10 CHAIRMAN: -- fix you where you were  
11 in the business of funeral directing.

12 MS. EULER: Right. That is true. I'm  
13 not saying this isn't a needed rule. I think  
14 it is a needed rule, but my question is, is  
15 it needed as an emergency rule?

16 CHAIRMAN: Any debate out there that  
17 you guys would see that --

18 MS. EULER: And we don't have a quorum.

19 CHAIRMAN: No, we don't.

20 MR. KRAUS: (Inaudible.)

21 MS. EULER: Where did Jim go?

22 MR. STALTER: A regular rule. Is that  
23 regular rule; is that what you're saying?

24 MS. EULER: Yeah.

25 CHAIRMAN: Hang on and our quorum will

1 be back.

2 (Off the record)

3 CHAIRMAN: We're all back.

4 MS. EULER: Are we back?

5 CHAIRMAN: We're back.

6 MS. DUNN: Todd, are you back? Okay.

7 MR. KRAUS: We're doing the second one  
8 as a regular rule.

9 CHAIRMAN: So, do we need a motion for  
10 that or just go back and pick them all up at  
11 once?

12 MR. KRAUS: I -- we're talking --

13 MS. EULER: I'd do them one by one.

14 CHAIRMAN: One by one.

15 MS. EULER: And you need to -- when  
16 you -- the motion needs to also have a finding  
17 by the Board that there is competent  
18 substantial evidence to support the need for  
19 the rule.

20 CHAIRMAN: Okay. So, on each one of  
21 them. Okay. So -- but the thought -- legal  
22 advice at this point in looking at it to the  
23 Board is that this would just be a regular --  
24 number two would just be a regular rule, the  
25 practice of funeral directing does not need

1 emergency-rule status. That's your advice;  
2 correct?

3 MS. EULER: Yes.

4 MR. KRAUS: Correct.

5 MS. DUNN: Correct.

6 CHAIRMAN: Okay. Now, Board, need a  
7 motion or a question on that we put rule  
8 number two there on practice of funeral  
9 directing as a regular rule.

10 MR. FRAKER: So moved.

11 CHAIRMAN: Gary makes the motion.

12 MR. MAHN: Second.

13 CHAIRMAN: Jim seconds. All in favor?

14 MS. EULER: Todd seconds.

15 CHAIRMAN: Or Todd seconds. I'm  
16 sorry. So, that goes to regular rule.

17 MS. EULER: You're sitting where Jim  
18 was last week and it's confusing him.

19 MR. MAHN: Sorry. I've been called  
20 worse.

21 MR. KRAUS: And we're approved to go  
22 forward, and there's substantial and --

23 CHAIRMAN: Oh, you need that even in  
24 regular rule?

25 MS. EULER: There's competent -- yes.

1 MR. KRAUS: -- and competent evidence,  
2 yes.

3 MS. EULER: Yes. For every rule, you  
4 need a --

5 CHAIRMAN: Oh, okay. I'm sorry. I  
6 thought that was only in the emergency status.

7 MS. EULER: No. The Board needs to  
8 find that there is a reason for the rule.

9 CHAIRMAN: Okay. And, Gary, your  
10 motion included that; correct?

11 MR. FRAKER: Yes, sir. It certainly  
12 did.

13 CHAIRMAN: All right.

14 MR. FRAKER: You heard it.

15 CHAIRMAN: I heard it. All right.

16 The next page.

17 MS. HAYES: Did you all vote on the  
18 first one?

19 CHAIRMAN: Yes.

20 MR. KRAUS: Number three, preneed  
21 seller, an agent must be licensed in Missouri.

22 MR. STALTER: This is a technical  
23 thing, but preneed agents aren't licensed;  
24 right? They're registered?

25 MS. EULER: Yes.



1 MS. DUNN: That's correct.

2 MS. EULER: You're correct.

3 MR. KRAUS: Registered.

4 UNIDENTIFIED: Good one, Bill.

5 MR. STALTER: I wish I had studied  
6 that. It just came up from the top of my  
7 head. I'm sorry.

8 MR. MAHN: One point for Bill.

9 MR. STALTER: I can go home; right?

10 MR. KRAUS: Must be an agent of a  
11 seller who is licensed to sell preneed  
12 contracts. Okay. You'll notice on each of  
13 these, we have the authorization there, so if  
14 you're curious about what section we were  
15 talking about or where it came from, it'll be  
16 in one of those sections there.

17 CHAIRMAN: Other than Bill's comment of  
18 changing licensed to registered, any other  
19 changes needed and required there?

20 MR. MAHN: (Inaudible.)

21 CHAIRMAN: Okay.

22 MS. EULER: This is the no-free-agent  
23 agent law.

24 CHAIRMAN: No what?

25 MS. EULER: No-free-agent agent law.

1           CHAIRMAN:   Okay.   So, the  
2   no-free-agent agent law.   Need a motion to  
3   make the preneed seller an agent and must be  
4   registered in Missouri rule an emergency rule?

5           MS. EULER:   And the finding that you  
6   believe there is competent, substantial  
7   evidence to support the need for the rule.

8           CHAIRMAN:   And you believe all that.

9           MR. MAHN:   First.

10          CHAIRMAN:   Yes from Todd.

11          MR. REINHARD:   Second.

12          CHAIRMAN:   Jim got it, second.

13          MR. FRAKER:   Jim got it.

14          CHAIRMAN:   Gary?

15          MR. FRAKER:   Yes.

16          CHAIRMAN:   Emergency rule.

17          MR. KRAUS:   Number four, final  
18   disposition is defined in Chapter 193.   I'd be  
19   curious about that, and it is on page 53 of  
20   the orange booklet.

21          MS. EULER:   Those of you that have it.

22          CHAIRMAN:   Any need for discussion?

23          MS. EULER:   What do you think, Todd?

24          MR. MAHN:   No.   No discussion.

25          CHAIRMAN:   No discussion.   All right.

1       Then we'll entertain a motion that the final  
2       disposition as defined in Chapter 193 go into  
3       emergency-rule status with the supported  
4       documents --

5               MS. EULER:  -- and finding that there's  
6       competent and substantial evidence to support  
7       the need for a rule.

8               CHAIRMAN:  -- findings and competence  
9       -- all that.  Motion?  Gary?

10              MR. FRAKER:  I've got it.

11              CHAIRMAN:  Second?

12              MR. REINHARD:  Second.

13              CHAIRMAN:  Jim.  Todd?

14              MR. MAHN:  For.

15              CHAIRMAN:  For it, yes.  So, emergency  
16       rule.  MR. KRAUS:  All right.  Number  
17       five, provider includes funeral establishment  
18       that has agreed to undertake obligations of  
19       preneed contracts pursuant to Chapter 436.

20              MS. EULER:  I have a question on this.  
21       Why -- okay.  Never mind.  I don't have a  
22       question.

23              MR. KRAUS:  I think number two should  
24       be any provider instead of and provider.  
25       Sharon, as we're going through these and we

1 make a reference to Chapter 436 --

2 MS. EULER: Yes.

3 MR. KRAUS: -- do you think we need to  
4 be more specific in references to sections of  
5 436 that have to do with preneed --

6 MS. EULER: Yeah.

7 MR. KRAUS: -- and not the whole  
8 chapter?

9 MS. EULER: Yeah. Well --

10 MR. KRAUS: Because, I mean, there's a  
11 lot more in that chapter.

12 MS. EULER: There is a lot more in the  
13 chapter. I think we also need to specify that  
14 it's the new law and not the old law. So, I  
15 -- yeah. We do need to specify that it's 436  
16 -- I don't know what the numbers are -- blah,  
17 blah, blah through blah, blah, blah.

18 CHAIRMAN: Okay.

19 MS. DUNN: Effective date of --

20 MS. EULER: No.

21 MS. DUNN: No? Okay. I didn't know  
22 when you said new law versus old law.

23 MS. EULER: The section, and we'll  
24 figure it out.

25 MR. KRAUS: Yeah. Because,

1 previously, it was 071 something through --

2 MS. EULER: It was 070 to something or  
3 another.

4 MR. KRAUS: Yeah. 005 through 071 is  
5 what it was before and right now.

6 MS. EULER: And now it's -- yeah. And  
7 you put as supplemented -- (inaudible.)

8 MS. DUNN: So, are we ready to vote on  
9 this one?

10 CHAIRMAN: I suppose. Any further  
11 discussion? Anybody got a thought? Is it  
12 good?

13 MR. MAHN: Motion is good.

14 MS. DUNN: So, emergency?

15 CHAIRMAN: Okay.

16 MS. DUNN: Motion?

17 CHAIRMAN: Todd made the motion; is  
18 that what I heard?

19 MR. REINHARD: Second.

20 CHAIRMAN: Jim seconded. Gary?

21 MR. FRAKER: Yeah.

22 CHAIRMAN: Yes.

23 MS. DUNN: And the finding there is  
24 competent and substantial evidence there is a  
25 need for a rule.

1 MS. EULER: And that includes the  
2 finding that there is competent and  
3 substantial evidence to support the need for  
4 the rule.

5 CHAIRMAN: It did.

6 MS. EULER: All right. Very good.

7 MR. MAHN: Are we saying prayers now  
8 or what?

9 CHAIRMAN: We are.

10 MR. MAHN: Chanting.

11 MS. EULER: We'll be singing later.

12 MS. RUSSELL: Sharon, is that also  
13 that we could change the statute of 436 to  
14 whatever specific section?

15 MS. EULER: Yes. Yes.

16 CHAIRMAN: Instead of Hail Mary, it's  
17 hail the rule.

18 MS. RUSSELL: Okay. Thank you.

19 MR. KRAUS: All right. Number six,  
20 display of license. I think we can forget  
21 about that one.

22 MS. EULER: Now, there is currently --  
23 there are current regs that address --

24 MR. MAHN: Take that one out. It  
25 clutters up the wall.

1 MS. EULER: -- that address  
2 establishments, directors, sellers, so,  
3 really, all -- you either need to rescind the  
4 portions of the rule that provides that for  
5 establishments, directors, and embalmers, and  
6 make this only for sellers, agents, and  
7 providers; do you see what I'm saying?

8 MR. KRAUS: Yes.

9 CHAIRMAN: So, the other law would  
10 take care of funeral directors and embalmers?

11 MS. EULER: Yeah.

12 CHAIRMAN: And apprentice and all that  
13 stuff?

14 MS. EULER: And establishments.

15 CHAIRMAN: Okay.

16 MR. KRAUS: I mean, unless you want  
17 one rule to cover all of them.

18 MS. EULER: I think we need -- the  
19 current law -- the current rules are organized  
20 by profession, and I think people are going to  
21 be confused enough about having a whole new  
22 set of laws that if we change the organization  
23 of the rules, it will confuse them even more.

24 MR. KRAUS: I think that's right.

25 MS. EULER: What do you all think?

1           MR. KRAUS: I think it -- because it  
2 would be odd for a funeral director to have to  
3 go to -- who doesn't sell and isn't involved  
4 in preneed --

5           MS. EULER: Right.

6           MR. KRAUS: -- to go to 436 about how  
7 to display their licenses.

8           MS. EULER: Because, right now, they  
9 look in the rule and there is a rule -- if I  
10 can find it -- 2120-2.060 are all the  
11 funeral-directing rules.

12          CHAIRMAN: I think that makes sense.

13          MS. EULER: And so, I think we need to  
14 start a new section when we do the final rules  
15 that's for sellers, providers, agents, and  
16 keep with that.

17          MR. KRAUS: And you'll notice on these  
18 drafts, they're not organized into sections or  
19 numbers yet.

20          MS. EULER: Right. Right.

21          MR. KRAUS: But they will be. So,  
22 have this be sellers, providers, agents.

23          MS. EULER: Yes. I'm looking for the  
24 rule. Yeah. All certificates, registrations,  
25 licenses, or duplicates thereof issued by the



1 State Board shall be displayed at all times in  
2 a conspicuous location accessible to the  
3 public.

4 MR. KRAUS: Now, will we have the same  
5 requirements for agents --

6 MS. EULER: Yes.

7 MR. KRAUS: -- with regard to a  
8 registration --

9 MS. EULER: Yes.

10 MR. KRAUS: -- as sellers and  
11 providers with regard to their licenses?

12 MS. EULER: Yes. Because they will  
13 get a certificate of registration.

14 MS. DUNN: Where will they display it?

15 MR. KRAUS: That's where I was going.

16 MS. EULER: Well --

17 MR. REINHARD: Wallpaper the wall.

18 MS. DUNN: Well, no. I mean, Akins  
19 may not --

20 MR. KRAUS: We can just make it this  
21 big and they can wear it as an ID wherever  
22 they go.

23 MS. EULER: That's right. We can  
24 laminate it.

25 MR. KRAUS: Display it on their person.

1 MS. EULER: Do you give pocket  
2 licenses?

3 MS. DUNN: Yes.

4 MR. KRAUS: Issue badges.

5 MR. REINHARD: Give them a badge, too.

6 MR. SPEAKS: We don't need no stinking  
7 badges.

8 MR. REINHARD: Todd wants a badge.  
9 (Inaudible.)

10 (Several people talking simultaneously.)

11 CHAIRMAN: You know, after all this,  
12 surely to goodness, they're going to put it on  
13 the wall.

14 MS. DUNN: But they don't have a wall.

15 MS. EULER: We're going to issue  
16 special jackets for everybody.

17 CHAIRMAN: In the provider's location  
18 or seller's location that they are working for.

19 MS. RUSSELL: Well, that's a good  
20 question. What if you sell for 15 funeral  
21 homes and you have --

22 CHAIRMAN: I have an embalmer's  
23 license in six funeral homes. I have a  
24 funeral-director's license in six funeral  
25 homes. I have a --

1 MR. MAHN: Brag, brag, brag.

2 MS. RUSSELL: I have no problem with --  
3 (inaudible.)

4 (Several people talking simultaneously.)

5 MS. EULER: The cardinal rule --

6 CHAIRMAN: Becky likes to send me lots  
7 of paper.

8 MR. KRAUS: So, are we going to issue  
9 all of those --

10 MR. MAHN: Big shot.

11 MR. KRAUS: -- and change all of them.

12 CHAIRMAN: You've got all them in more  
13 than one location, too, Bucko.

14 MR. FRAKER: Martin, you're --  
15 (inaudible.)

16 MS. EULER: The cardinal rule for  
17 regulations is that the regulations have to  
18 mirror what's in the statute. They can't  
19 exceed the statute.

20 (Several people talking simultaneously.)

21 MS. EULER: So, let's look and see  
22 what the statute says because there is a  
23 statute that talks about it. I just need to  
24 find it.

25 (Several people talking simultaneously.)

1 MS. EULER: Here, it says all licenses  
2 or registrations or duplicates thereof shall  
3 be displayed in each place of business.

4 MS. DUNN: But these are travelers.

5 MS. EULER: I don't care. I didn't  
6 write this.

7 MR. REINHARD: Well, do you need to  
8 specify, like, at whatever funeral home  
9 they're working at, it has to be displayed  
10 there?

11 MS. EULER: Yeah. They can carry it  
12 with them in a photo -- in an easel and post  
13 it on -- put it on the desk.

14 CHAIRMAN: So, are you liking that or  
15 not liking that?

16 MS. DUNN: Well, a funeral director can  
17 display their agent.

18 MS. RUSSELL: Carrying it is no  
19 problem. Yeah. A funeral director that has a  
20 funeral home can display it, but a person that  
21 works for 15 funeral homes --

22 MS. EULER: You put it --

23 MS. RUSSELL: -- that may one day next  
24 week go to another 15 funeral homes --

25 MS. EULER: You put it in a photo

1 album and you put it on the desk where you're  
2 living with them.

3 MS. RUSSELL: While you're working  
4 there. While you're working there --

5 MS. EULER: Yeah.

6 MS. RUSSELL: -- but does it have to  
7 stay there permanently so when the inspector  
8 comes?

9 CHAIRMAN: If an embalmer drops in a  
10 funeral home and signs the embalming log once,  
11 his license better be on the wall.

12 MS. RUSSELL: I'm okay with it. I'm  
13 just saying that you --

14 CHAIRMAN: Oh, I'm just trying to be --

15 MS. RUSSELL: Yeah. I'm okay with it.  
16 I just know that your --

17 CHAIRMAN: -- you know, what's the  
18 word?

19 MS. RUSSELL: -- larger third-party  
20 sellers and people that have several agents  
21 out there working that don't know from day to  
22 day which funeral home they may be at could  
23 have a problem.

24 MS. EULER: Well, the point --

25 MR. MAHN: We're going to know now.

1 MS. RUSSELL: Yeah, we're going to  
2 know now.

3 MS. EULER: The Board can clarify this  
4 by rule because it doesn't say shall be  
5 displayed at all times. It just says shall be  
6 displayed.

7 MS. RUSSELL: Okay. Okay.

8 MS. EULER: So, if the Board wants to  
9 pass a rule -- the other registrations need to  
10 be displayed at all times, but if you want to  
11 pass a rule that says just so long as it's  
12 displayed while you're selling, I think you  
13 would be authorized by that.

14 CHAIRMAN: Well, get real for a minute  
15 and get away from the bandwagon that I'm  
16 beating on. Is it really important?

17 MS. EULER: Yes.

18 MS. RUSSELL: Sharon makes sense.  
19 Sharon makes sense. That makes sense to  
20 display it while you're writing the contract.

21 MS. EULER: It is important.

22 MS. RUSSELL: That is important for the  
23 consumer to see you've got that registration  
24 then when you're making the contract. When  
25 you're at a doctor's office, I look at the

1 wall for the licenses, for --

2 MR. MAHN: The wall.

3 MS. EULER: The wall.

4 MS. RUSSELL: The wall.

5 MR. MAHN: That's the wall. Not on  
6 the desk, the wall.

7 MS. RUSSELL: But that's while the  
8 consumer is there, what she is saying will  
9 handle that, because you will actually display  
10 it while you're making the preneed  
11 arrangements. You'll carry it with you.

12 MR. MAHN: Who's going to monitor that?

13 MS. EULER: The consumers will. Trust  
14 me.

15 MS. RUSSELL: That's --

16 MS. DUNN: Well, this doesn't require  
17 --

18 (Several people talking simultaneously.)

19 MR. REINHARD: (Inaudible.)

20 MR. MAHN: I won't hang that stuff all  
21 over the wall.

22 MR. REINHARD: (Inaudible.)

23 MR. MAHN: It looks terrible. It  
24 doesn't go with my decor at all.

25 CHAIRMAN: So, is what I just heard if

1       you're the traveling preneed agent, you just  
2       have your license in a frame and you just set  
3       it on the desk?

4               MR. REINHARD: As you write a contract.

5               CHAIRMAN: As you write the contract?

6               MR. MAHN: You could glue it in your  
7       suitcase and just set your whole suitcase up  
8       there. Or to the back of your computer.

9               MS. EULER: I mean, it's up to the  
10      Board.

11              CHAIRMAN: Take your family's pictures  
12      in, put that on the desk, you know, your  
13      business cards.

14              MS. RUSSELL: No. I think you just  
15      have to conspicuously display it on the table  
16      in front of them, you know, on this laminated  
17      sheet right there as you're handing them the  
18      price list and everything else.

19              MS. DUNN: Everyone gets a laminated  
20      card.

21              MS. EULER: I just throw it out as an  
22      option. I think that would be consistent with  
23      the statute. It's up to the Board to decide  
24      whether that's what you want to do or not.

25              MR. REINHARD: We do? I don't have a



1 laminated card.

2 UNIDENTIFIED: They rash us.

3 MS. HAYES: Sharon, I have a question.

4 MS. RUSSELL: We have one.

5 MR. MAHN: I can't even get a badge.

6 MS. HAYES: You said that the agent  
7 said it needs to be displayed at place of  
8 business.

9 MS. EULER: Yes.

10 MS. HAYES: If I'm an agent working  
11 for a third-party seller, is my place of  
12 business the third-party seller's company or  
13 is my place of business the funeral home,  
14 because you could do it where the agents have  
15 it displayed at the corporate office, or the --

16 MR. REINHARD: That's good, Lori.  
17 There you go. Thank you.

18 MS. HAYES: -- ATF office or whatever.

19 MS. EULER: Well, you could also argue  
20 that the place of business is where you are  
21 having contact with the public. I mean, I  
22 think the purpose of this law is for the  
23 public to know that you are on the up-and-up,  
24 and you have that registration issued by the  
25 State. So, if I were the public, I would

1 want to see that when I sign the contract.

2 MR. SPEAKS: Well, the argument that  
3 was put out in the working group was that the  
4 purpose of this was so that the Board would  
5 have control over these people and know who  
6 they were.

7 MS. EULER: Well, that, too.

8 MR. SPEAKS: It's nothing to do with  
9 the consumer.

10 MS. EULER: Of course, it's all about  
11 the consumer, Brad.

12 MR. SPEAKS: No, it's not. So, her  
13 question gets at how does she inspect for that?

14 MS. EULER: Yeah.

15 MR. SPEAKS: Because if it's an  
16 impractical deal, then it's --

17 MS. EULER: Yeah.

18 MR. SPEAKS: -- it doesn't matter what  
19 the law says, you're back to square one. How  
20 do you enforce it and how do you find out  
21 about it?

22 MS. DUNN: It's going to be easy for  
23 everyone that is our traveling agents.

24 MS. EULER: Well, or tell me to write  
25 the rules.

1           CHAIRMAN: You know, actually you're  
2 talking about the traveling agent, but,  
3 really, the place that it will come up the  
4 most is really her and the rest of the CIU  
5 because they're going to walk in with the  
6 little sheet that says where is this one,  
7 where is this one, where is this one, where is  
8 this one?

9           MS. DUNN: Yes.

10          CHAIRMAN: So --

11          MR. MAHN: I think when you register --  
12 (inaudible) -- put it on the wall.

13          MS. EULER: What if they're selling  
14 for not a funeral home?

15          MR. MAHN: He's embalmed for six  
16 funeral homes. His license is on six funeral  
17 homes.

18          CHAIRMAN: Actually, I think,  
19 obviously, the public is really important, but  
20 the criteria of where it goes is what --  
21 (inaudible) -- with those sheets. But where  
22 they're registered -- where they've told the  
23 Board they're registered because that's what's  
24 going to go on that printout.

25          MR. SPEAKS: I think that's very

1 practical.

2 MR. STALTER: It's like a cross-check,  
3 is what it is.

4 CHAIRMAN: Yeah.

5 MR. MAHN: Put them on the wall.

6 MS. EULER: What about -- that's where  
7 their license hangs on the wall, but that they  
8 shall carry their pocket card whenever they  
9 are conducting a preneed sale?

10 MR. MAHN: How are you going to force  
11 somebody to carry a pocket card with them? I  
12 mean --

13 MR. REINHARD: Where is your pocket  
14 card?

15 MR. MAHN: -- I'm not going to carry  
16 it. I don't have it. I think we're just  
17 trying to reference if they're on -- if  
18 they're registered there. I mean, you leave  
19 the house, maybe to get -- I mean, who is  
20 going to monitor that?

21 MS. EULER: The consumers will.

22 MR. REINHARD: They haven't -- they've  
23 done a hell of a poor job up to this point.

24 UNIDENTIFIED: Yeah.

25 MR. MAHN: The consumer can't even

1 figure out NPS.

2 CHAIRMAN: They'll have a pocket card  
3 if they want it, you know.

4 MS. EULER: I'm just throwing out  
5 options. It's the Board's decision. I'm just  
6 helping you see some of your options.

7 CHAIRMAN: Okay. Okay. Any more  
8 discussion on that point? I thought that  
9 would be an easy one.

10 MR. SPEAKS: That's as clear as mud.

11 MS. DUNN: Well, what is the solution?

12 MS. EULER: So, what do you want to do?  
13 (Several people talking simultaneously.)

14 MR. REINHARD: You've got people out  
15 selling. I mean, do you think do you think  
16 it's a big inconvenience for people to --  
17 like, if they -- like him; I mean, if you  
18 sell for six different funeral homes, get six  
19 copies and stick them on the walls.

20 (Several people talking simultaneously.)

21 CHAIRMAN: I think the solution is  
22 like how you guys cross-reference the  
23 embalmers and the funeral directors on the  
24 establishments. It will have to be that way  
25 or how will you ever know?

1           MR. STALTER: I guess the issue is how  
2 do you display it while you're walking around?

3           MS. EULER: Okay. So, do we leave the  
4 rule the way it is?

5           MR. MAHN: So, stick it on the wall.

6           MR. STALTER: Yeah. Let's stick it on  
7 the wall wherever -- where you're represented  
8 that you are an agent out of.

9           CHAIRMAN: Yeah.

10          MR. REINHARD: Right.

11          CHAIRMAN: So, is that what this --

12          MR. REINHARD: I think that's the only  
13 practical way to do it.

14          CHAIRMAN: Is that what this says?

15          MS. EULER: You read it and tell me  
16 what you think it says. That's more important  
17 than what I think it says.

18          CHAIRMAN: You wrote it.

19          MS. EULER: I didn't write it. Sarah  
20 wrote it.

21          CHAIRMAN: Oh, okay. Well, get Sarah  
22 in here then. What did she mean?

23          MS. EULER: She ran away.

24          CHAIRMAN: I know. Did you see her  
25 run when you said that?

1 MS. EULER: Yeah.

2 MS. DUNN: Well, first of all, an agent  
3 doesn't have a license, like Bill said a while  
4 ago.

5 MS. EULER: Right. So, it should be  
6 license/registration.

7 MS. DUNN: Right.

8 MR. SPEAKS: Well, let's just stop and  
9 think this through a second. So, you've got  
10 somebody that's out selling and just going  
11 door to door, and the consumer becomes  
12 suspicious because they said, well, I  
13 represent XYZ funeral home. So, they should  
14 be able to go down to XYZ funeral home and  
15 look on the wall and say, oh, yeah, you know,  
16 John Doe does work here.

17 MS. EULER: Uh-huh. Uh-huh. Right.

18 CHAIRMAN: I agree with it, yeah.  
19 Yeah. So, does all the legalese support that?

20 MS. EULER: Uh-huh.

21 MS. DUNN: So, then would this be --  
22 substantiate an emergency?

23 MS. EULER: Since it's new licenses  
24 and this rule is about the new licenses and  
25 registrations, yes.

1 MS. DUNN: Okay. So, whatever the  
2 Board decides on, we would make the  
3 modification of license/registration for --

4 MS. EULER: And we take out licensed  
5 establishments, funeral directors, and  
6 embalmers --

7 MS. DUNN: Right.

8 MS. EULER: -- because they already  
9 have rules that cover this. So, this is just  
10 for sellers, agents, and providers.

11 MS. DUNN: Okay. So, get a motion.

12 CHAIRMAN: Somebody give me a motion  
13 for that.

14 MR. MAHN: First.

15 MR. FRAKER: Second.

16 CHAIRMAN: All in favor?

17 MR. REINHARD: Yes.

18 CHAIRMAN: Yes. Done. Okay.

19 MS. DUNN: Okay. Moving on.

20 MS. EULER: I have a question about  
21 this. I wasn't here for this part of the  
22 discussion, but doesn't this just say what's  
23 already in the statute?

24 MS. DUNN: Are you talking about  
25 corporate?



1 MS. EULER: Uh-huh. Oh, there's a  
2 typo. Okay. I see.

3 MS. DUNN: So, tell us.

4 MS. EULER: Oh, there's a typo in the  
5 statute and the "as" is left out.

6 MR. REINHARD: Does that void it?

7 MS. EULER: No.

8 MR. REINHARD: Oh, shoot.

9 MR. SPEAKS: Loophole.

10 MS. EULER: And what it does is saying  
11 each owner, director, manager, or controlling  
12 shareholder of the applicant corporation shall  
13 be eligible as if they were applying and at  
14 least one owner. See, those are inconsistent  
15 because one says -- it says each one should be  
16 and then it says and one. That's  
17 inconsistent. So, you can't have both A and  
18 B. And I don't think you want just B.

19 CHAIRMAN: Because?

20 MS. EULER: Because then Martin Vernon  
21 can be the one director --

22 MR. SPEAKS: Yeah. They're all  
23 crooked except for the one guy, and you'll  
24 send him up for the license.

25 MS. EULER: Exactly. And the rest of

1       them will be -- (inaudible.)

2               CHAIRMAN:   What are you guys grinning  
3       about?

4               MR. REINHARD:   (Inaudible.)

5               MS. EULER:    So --

6               MR. SPEAKS:   In the example, you're  
7       not the crooked one, Martin.

8               CHAIRMAN:    Okay.

9               MS. EULER:    Thanks for clarifying  
10       that, Brad.   CHAIRMAN:   Thank you.

11              MR. SPEAKS:   He's puzzled.

12              MS. EULER:    So, I --

13              MR. REINHARD:   While you're pondering  
14       on that, Ralph Eggen called and wants to know  
15       why we have to have funeral-director licenses  
16       at all because he just had a family pull up  
17       there and take one out in the casket, and  
18       Ralph had a body go out of there in the back  
19       of pickup truck and a casket, and the family  
20       didn't have to have a funeral-director license  
21       like we have to have one.

22              MR. SPEAKS:   Do you have Senate Bill 1  
23       in front of you or are you reading off of this?

24              MS. EULER:    I have Senate Bill 1 in  
25       front of me.   I think you should say officer

1 and not owner.

2 CHAIRMAN: Because you're not blood  
3 related, I guess.

4 MS. DUNN: Where? Officer?

5 MR. REINHARD: I'll tell him.

6 MS. EULER: My suggestion would be  
7 that you do A and not B; take out B. And for  
8 A, instead of owner, say each officer,  
9 director, manager, or controlling shareholder  
10 of the applicant corporation shall be eligible  
11 for licensure as if they were applying for  
12 licensure as an individual, because that  
13 mirrors the language of the statute.

14 MR. SPEAKS: Sharon, how are you going  
15 to know, so a publicly held company like Mr.  
16 Moody's client --

17 MS. EULER: Well, that's about what I  
18 was to say.

19 MR. SPEAKS: -- controlling shareholder  
20 actually has some hedge fund in New York City?

21 MS. EULER: That's exactly the point I  
22 was about to make. And I wasn't here for the  
23 discussion, I don't know if you discussed  
24 that. If you want to limit that to people  
25 who actually have something to do with it,

1       because I am willing to bet that SCI has an  
2       officer, a director, or a controlling  
3       shareholder that may have had a DUI at some  
4       point. Or -- well, I'm just throwing that out  
5       as an option. But, you know, they're in  
6       Holland. I don't know if you have a lot of  
7       business in Holland or not, but I'm throwing  
8       that out. It has nothing to do with the  
9       operation here in Missouri. I'm wondering if  
10      you want to limit this to those people who are  
11      actually related to the business in Missouri.

12               MR. WARREN: But you don't you run  
13      into the same problem if you've got a big  
14      outfit like SCI, they may not have any  
15      Missouri specific. I mean, they might have  
16      somebody who's, like, the vice president for  
17      Missouri, you mean?

18               MS. EULER: Yeah.

19               MR. WARREN: Or whoever would be --

20               MS. EULER: Somebody who has some  
21      contact with Missouri because the guy in  
22      Holland who had a DUI, do we really care? I  
23      mean, it's up to the Board. Don't look --

24               CHAIRMAN: I already did. Too bad.

25               MS. EULER: I mean, it's up to --

1           MR. WARREN: Well, while you still  
2 have it there -- (inaudible) -- manager. So,  
3 if you have the State manager for, say, SCI,  
4 the Missouri State manager, then that would be  
5 the individual to get the license for the  
6 State of Missouri?

7           MS. EULER: Well, and that's exactly  
8 the point, that the corporation gets the  
9 license, or do you want to just leave it as  
10 is and do it on a case-by-case basis?

11          MR. WARREN: Well, wouldn't the  
12 chairman of the board or the president of the  
13 corporation apply on behalf of the corporation?

14          MS. EULER: I don't know who applies.  
15 Who applies on behalf of this? Yeah. You're  
16 asking me hard questions.

17          UNIDENTIFIED: Well, I guess it would  
18 be --

19          MS. EULER: Wouldn't it be the local  
20 people?

21          UNIDENTIFIED: Yeah. The local people  
22 -- (inaudible.)

23          MR. WARREN: I mean, I'm just talking  
24 about general corporate law who -- (inaudible.)

25          MS. EULER: Yeah. Or somebody who has

1       been authorized by the company to apply.

2               MR. WARREN: Right. Right. It could  
3       the president of the Missouri operations or  
4       something like that.

5               MS. EULER: Right.

6               MR. WARREN: Whoever the appropriate  
7       corporate officer in their structure would be,  
8       and they would have to choose that individual  
9       and be willing to defend that choice, you know.

10              MS. EULER: Yeah. So, I throw that  
11      out. The Board can do with it as it wishes.

12              CHAIRMAN: I don't think the Board has  
13      a clue.

14              MR. MAHN: We've been talking about it  
15      for so long, I forgot what we're talking about.

16              CHAIRMAN: So, best advice is what?

17              MR. REINHARD: Yes.

18              MS. EULER: Well, you can leave it,  
19      you can change -- make only A, change owner to  
20      officer.

21              CHAIRMAN: That wasn't the question.  
22      Best advice.

23              MS. EULER: I'm giving you my best  
24      advice.

25              CHAIRMAN: Oh, no. You said I could.

1 MS. EULER: Wait for it.

2 CHAIRMAN: Okay.

3 MS. EULER: And then deal with things  
4 on a case-by-case basis as the applications  
5 come in.

6 CHAIRMAN: Is that best advice?

7 MS. EULER: Yeah. And then if you --  
8 it looks like you need a rule or if it's  
9 going to be an issue, then we can do a rule  
10 then.

11 CHAIRMAN: Okay. Do you all --  
12 somebody make a motion that we --

13 MR. REINHARD: Down the road?

14 MR. STALTER: Down the road. That's  
15 what I was waiting about for an hour.

16 MS. EULER: No. That you do A, you  
17 strike B, but you do accept paragraph A  
18 changing owner to officer, is what I would  
19 recommend.

20 MS. DUNN: As a regular rule or --

21 MS. EULER: As an emergency rule.

22 MS. DUNN: As an emergency.

23 MR. REINHARD: And what if they're --

24 MS. DUNN: So, use A, strike owner to  
25 officer, and eliminate B?

1 MS. EULER: Correct.

2 MS. DUNN: Motion?

3 MR. FRAKER: I'll make a motion.

4 MS. EULER: Also, I think it needs to  
5 be provider or seller.

6 MR. FRAKER: Okay.

7 MR. STALTER: Can I ask a question?  
8 Then let's just -- since we're picking on SCI,  
9 you know, it said that SCI's -- the president  
10 of Missouri SCI has some type of -- he's not  
11 a licensed funeral director or an embalmer or  
12 anything like that.

13 MS. EULER: Uh-huh.

14 MR. STALTER: But then there is some  
15 issue where he wouldn't be eligible because of  
16 some kind of a past record, that then that  
17 affects SCI's provider licenses?

18 MS. EULER: I think under the statute,  
19 arguably, the Board could deny on that basis.  
20 Realistically, I don't think that's going to  
21 happen.

22 MR. SPEAKS: Yeah. It's just like the  
23 individual case, like this guy, you know.

24 MS. EULER: But if the Board is faced  
25 --



1           MR. SPEAKS:   The Board has the  
2           discretion.

3           MS. EULER:   Right.   The Board has  
4           discretion, but if the Board has somebody  
5           who's been convicted of embezzling \$600  
6           million in preneed funds, and they form a  
7           corporation and apply for licensure, then the  
8           Board can deny that.

9           MR. SPEAKS:   Now, you've got a leg to  
10          stand on.

11          MR. STALTER:   But let's step back.  
12          Now, we're not talking about SCI's Missouri  
13          president, we're talking about somebody that's  
14          not even in the state of Missouri.

15          MS. EULER:    I know.

16          MR. STALTER:   And then that applies,  
17          too?

18          MS. EULER:    Under the statute, it does.

19          MR. SPEAKS:   But what it says is each  
20          owner or director or controlling shareholder.

21          MR. STALTER:   Yeah.   Each officer.

22          MR. SPEAKS:   I don't know if you can  
23          change that by rule.

24          MS. EULER:    And I agree that that --  
25          but for emergency-rule basis, I don't now that

1 we need to address that right now. If it  
2 looks like it's becoming an issue --

3 MR. STALTER: Well, I agree. I think  
4 that's why I'm -- my driving point is, this  
5 might be something you might want to raise,  
6 but I think SCI would probably have something  
7 to say about that, and so would Stuart and --  
8 (inaudible.)

9 MS. EULER: Well, there are others.

10 MR. STALTER: Yeah.

11 MS. EULER: Because this -- the point  
12 of this statute is really, I think, intended  
13 to apply to somebody who is trying to use a  
14 corporate entity as a shield and say, oh, no,  
15 the corporation has not been convicted of a  
16 felony, you have to give me a license.

17 MR. STALTER: I understand, but I  
18 think if you throw that net too wide.

19 MS. EULER: I agree.

20 MR. STALTER: Okay.

21 MS. EULER: And I think the Board is  
22 going to have to deal with that on a  
23 case-by-case basis. And if it looks like it's  
24 becoming an issue, we can revisit whether we  
25 need a rule. That would just be my

1 recommendation. The Board can do with it as  
2 they wish.

3 CHAIRMAN: And I think we had a motion  
4 for that; right?

5 MR. REINHARD: And a second.

6 CHAIRMAN: And Jim seconded it?

7 MR. REINHARD: Uh-huh.

8 CHAIRMAN: Todd?

9 MR. MAHN: Yes.

10 CHAIRMAN: All right. It passes.

11 MS. RUSSELL: So, it's not an  
12 emergency rule?

13 MS. EULER: Yes. It is an emergency  
14 rule.

15 CHAIRMAN: And all of that included  
16 the -- what's the verbiage?

17 MS. EULER: Competent, substantial  
18 evidence to support the need for the rule.

19 CHAIRMAN: All right. Okay. The next  
20 one?

21 MS. EULER: And, Becky, you got that  
22 that applies both to providers and sellers?

23 MS. DUNN: Yes, ma'am.

24 MS. EULER: Okay. And that'll change  
25 the authority statute, too.

1 MS. DUNN: Okay.

2 MS. EULER: The next rule, I think,  
3 needs to apply to sellers and to providers.  
4 And the display issue is taken care of in  
5 another rule, so we don't need that. And the  
6 rest of this looks like it mirrors the  
7 funeral-establishment rule, so that's  
8 consistent.

9 CHAIRMAN: I was getting ready to say.

10 MS. EULER: And the comment, the  
11 answer is no, because we don't do that for  
12 funeral establishments.

13 CHAIRMAN: Okay.

14 MS. EULER: So, make it apply to both  
15 sellers and providers throughout and take out  
16 the sentence that says the license issued by  
17 the Board shall be displayed in a conspicuous  
18 location accessible to the general public at  
19 that location.

20 CHAIRMAN: Okay. All right. Need a  
21 motion.

22 MR. MAHN: Motion.

23 CHAIRMAN: Second?

24 MR. REINHARD: Second.

25 CHAIRMAN: Okay. Jim seconds. Gary?

1 MR. FRAKER: Yes.

2 CHAIRMAN: All right. An emergency  
3 rule and finding there is competent and  
4 substantial evidence that there is a need for  
5 the rule. The next one.

6 MS. EULER: And, again, it needs to be  
7 sellers and providers, both. But this is for  
8 a biannual renewal, and sellers and providers  
9 are annual. So, we need to change that to  
10 say annual instead of biannual.

11 CHAIRMAN: So, you said change it back  
12 to annual; correct?

13 MS. EULER: Yes.

14 CHAIRMAN: And strike the biannual?

15 MS. EULER: Uh-huh.

16 CHAIRMAN: Okay. All right.

17 MS. EULER: And it would seem to me if  
18 -- and we also need to add the appropriate  
19 section for providers so it's sellers and  
20 providers, that if a seller, one of the  
21 prerequisites for them to be renewed is that  
22 they file annual reports.

23 CHAIRMAN: Makes sense. Okay.

24 MS. RUSSELL: What was that, Sharon?

25 MS. EULER: That they need to file

1       their annual reports.

2               MS. RUSSELL:  Oh.

3               MR. REINHARD:  That's logical.

4               MS. EULER:  Huh?

5               MR. REINHARD:  That's logical.

6               MS. EULER:  Yeah.

7               MR. REINHARD:  So, we need to make a  
8       motion.

9               CHAIRMAN:  Correct.  Jim makes the  
10       motion.

11               MS. EULER:  What's the -- hang on a  
12       minute.  It says this seems inconsistent with  
13       320.4.  What does that say?  320.4.  Oh, it's  
14       not, no.

15               UNIDENTIFIED:  Right.

16               MS. DUNN:  Okay.  So, we're going to  
17       change two years to annual, we're going to  
18       include seller and provider, we're going to  
19       make sure this --

20               MS. EULER:  Wait a minute.  You know  
21       what?  I think that we can't do this rule for  
22       sellers because of the section.  I'm looking  
23       on page 7 of Senate Bill 1.  Sub 4 says any  
24       license which has not been renewed as provided  
25       by this section shall expire.  A licensee who

1 fails to apply for renewal within two years of  
2 reinstatement of renewal date may apply for  
3 reinstatement by satisfying the requirements  
4 of subsection 3 and paying a delinquent fee.  
5 So, the statute already sets out what you need  
6 to do if you don't --

7 MS. DUNN: Renew.

8 MS. EULER: -- renew. We need to set  
9 a fee for this.

10 CHAIRMAN: Meaning just the renewal  
11 fee?

12 MS. EULER: Yeah. Which we do next  
13 week.

14 MR. STALTER: Is there really an  
15 emergency need for this one?

16 MS. EULER: Huh?

17 MR. STALTER: Is there an emergency  
18 need for the renewal?

19 MS. EULER: Well, you see, I don't  
20 think so. I don't think this needs to be an  
21 emergency rule, and I really don't think that  
22 this rule is needed because the statute really  
23 sets forth everything that's in this rule.  
24 The only thing that's -- yeah. I don't think  
25 the rule is needed.

1 MS. DUNN: So, you don't need a rule  
2 with regard to the penalty fee?

3 MS. EULER: You need a rule with  
4 regard to the fee, but that's not what this  
5 rule is.

6 MS. DUNN: Okay.

7 MS. EULER: So, I don't think this is  
8 needed as an emergency rule because it's not  
9 going to come into play for at least a year,  
10 and the emergency rule will have expired by  
11 then.

12 CHAIRMAN: Okay.

13 MS. DUNN: So, hold it for a regular  
14 rule?

15 MS. EULER: I don't even -- I don't  
16 think you need it.

17 UNIDENTIFIED: No.

18 MS. EULER: Because the statute sets  
19 forth everything that this rule says.

20 MS. DUNN: Okay.

21 MS. EULER: So, I don't think you need  
22 it. That would be my recommendation.

23 CHAIRMAN: So, can we just go -- just  
24 blow by it and go on, or do you need a motion  
25 of some kind?



1 MS. DUNN: Let's just do a motion that  
2 we do not need it.

3 MS. EULER: A motion that we don't  
4 need this rule.

5 MS. DUNN: Do not need this rule.

6 CHAIRMAN: Make a motion.

7 MR. FRAKER: Make the motion.

8 CHAIRMAN: Gary made the motion.

9 MR. MAHN: Second.

10 CHAIRMAN: Todd seconds. Jim?

11 MR. REINHARD: Fine with me.

12 CHAIRMAN: Fine with you.

13 MS. DUNN: Because it doesn't be found  
14 to be competent and supportive --

15 CHAIRMAN: Because it doesn't -- as  
16 Becky said -- found to be competent and  
17 substantial evidence.

18 MS. EULER: There you go.

19 CHAIRMAN: Okay. Well, we surely need  
20 the other one if you have to display the  
21 license.

22 MR. MAHN: Which one?

23 CHAIRMAN: Todd, just make a motion to  
24 take them all and let's be done with it.

25 MS. DUNN: Are you okay with this one,

1 Sharon?

2 MS. EULER: Yeah.

3 MR. REINHARD: Can we do that?

4 CHAIRMAN: Huh?

5 MR. REINHARD: Can we do that?

6 MS. DUNN: So, we just need a motion to  
7 approve.

8 CHAIRMAN: Anything go in that that we  
9 need to do, or is it okay?

10 MS. DUNN: Sharon says it's okay.

11 CHAIRMAN: Okay. Legal counsel thinks  
12 rule for license, a funeral director must  
13 report each seller is okay. Need a motion to  
14 make emergency rule.

15 MR. FRAKER: So moved.

16 CHAIRMAN: Gary makes the motion.

17 MR. MAHN: Second.

18 CHAIRMAN: Todd seconds. Jim?

19 MR. REINHARD: Third.

20 CHAIRMAN: Jim says yes. That it is  
21 found to what?

22 MS. DUNN: Competent.

23 CHAIRMAN: That is found competent and  
24 substantial evidence -- that there is  
25 substantial evidence for the need for an

1 emergency rule. It is done.

2 MR. MAHN: Everything?

3 CHAIRMAN: No. I wish. Are you  
4 willing to take them that way?

5 MS. EULER: Martin, can we take just,  
6 like, a five-minute, ten-minute little break?

7 CHAIRMAN: Legal counsel is requesting  
8 a five-minute break or a ten-minute break, or  
9 however long it takes.

10 (Off the record)

11 CHAIRMAN: The next one is emergency  
12 rule, preneed agent must take Missouri Law  
13 exam.

14 MS. RUSSELL: Would you change that  
15 word again, Sharon, for requirement for  
16 registration?

17 MS. EULER: Registration, yes.

18 CHAIRMAN: Anything else you need to  
19 discuss on that or go?

20 MS. EULER: I wonder if we need to add  
21 here that they can register -- they can send  
22 in their application for registration before  
23 they take the Law exam, that they need to send  
24 their application for registration in by  
25 October 31st.

1 MS. HAYES: On that note, we will have  
2 to send out that certificate of eligibility  
3 for that Law exam before they can --  
4 (inaudible.)

5 MS. DUNN: There is a certificate of  
6 eligibility that we send to the International  
7 Conference so that they know this person is  
8 eligible to take.

9 MS. EULER: But when they send in  
10 their notice of intent to apply, that would  
11 trigger that.

12 MS. DUNN: Okay.

13 MS. HAYES: And that would be their  
14 way of knowing that we got their form, too.

15 MS. EULER: Yeah.

16 MS. HAYES: They're going to get that  
17 certificate back.

18 MS. DUNN: Right.

19 CHAIRMAN: Does that work? Anything  
20 else?

21 MS. RUSSELL: Didn't she say that --

22 MR. STALTER: Can you repeat that part  
23 again for us?

24 MS. EULER: That they need to send in  
25 their application for registration by October

1 31 --

2 MR. STALTER: Okay.

3 MS. EULER: -- but they have until  
4 December to take the license -- the exam --  
5 till they can pass the exam. So, they can  
6 send in their application before they've  
7 passed the exam.

8 MR. STALTER: And this is just  
9 everybody excluding currently licensed funeral  
10 directors --

11 MS. EULER: Right.

12 MR. STALTER: -- because they're --  
13 (inaudible.)

14 MS. EULER: Right. This is just for  
15 people who need to be registered as an agent  
16 and have to take the Missouri Law.

17 CHAIRMAN: So, do we need to clean  
18 anything else up here with this, or just the  
19 motion and go?

20 MS. EULER: No. Motion to go.

21 CHAIRMAN: Motion for preneed agents  
22 to take the Missouri Law exam for emergency  
23 rule?

24 MR. MAHN: First.

25 MR. FRAKER: Second.

1           CHAIRMAN:   Jim?

2           MR. REINHARD:   Yes.   Second.

3           CHAIRMAN:   It passes emergency rule.

4           MS. EULER:   And a finding of  
5           substantial and competent evidence to support  
6           the need for the rule?

7           CHAIRMAN:   That, it is.

8           MS. EULER:   On this next one, does  
9           this rule say anything that the statute does  
10          not already say?

11          CHAIRMAN:   It does or it doesn't?

12          MS. EULER:   It is an addition, so it's  
13          an appropriate rule.

14          CHAIRMAN:   Okay.

15          MR. STALTER:   But you don't want to  
16          mention joint-account contracts when you're  
17          talking about 80 percent.   Next-to-the-last  
18          line.

19          MS. EULER:   That is -- that is  
20          correct.   It's just trusts, so we take out the  
21          word "joint account" in the next-to-the-last  
22          line and the third line from the bottom.   And  
23          I think we just say against a preneed seller  
24          and take out the words "of a preneed trust,"  
25          because nobody sells preneed trusts.   Would

1       you like me to read that?

2               MS. DUNN:   Yes.

3               MS. EULER:   Pursuant to section  
4       333.330.4 RSMo., the Missouri State Board of  
5       Embalmers and Funeral Directors shall not be  
6       entitled to seek injunctive relief against a  
7       preneed seller if there is a shortage in the  
8       preneed trust greater than 20 percent of the  
9       total amount required to be held or deposited  
10      into the trust pursuant to Chapter 436 -- and  
11      that should set out the sections -- that is  
12      exclusively the result of normal fluctuations  
13      in the market. That could be worded a little  
14      better, but that works.

15              CHAIRMAN:   Any other corrections or  
16      thoughts that we need to go? Motion to go to  
17      emergency rule?

18              MR. MAHN:    First.

19              CHAIRMAN:    Todd makes the motion.

20              MR. REINHARD: Second.

21              CHAIRMAN:    Jim seconds. Gary?

22              MR. FRAKER:   Yes.

23              CHAIRMAN:    It passes finding that  
24      there is competent and substantial evidence  
25      that there is a need for an emergency rule.

1 Next?

2 MS. EULER: I think that's fine, and  
3 that's the last one.

4 CHAIRMAN: Okay. Okay. Need a motion  
5 for financial welfare cause for injunction to  
6 become an emergency rule.

7 MR. FRAKER: I'll make the motion.

8 CHAIRMAN: Gary makes the motion.

9 MR. MAHN: Second.

10 CHAIRMAN: Todd seconds. Jim?

11 MR. REINHARD: Yes.

12 CHAIRMAN: And it passes for there is  
13 findings that there is competent and  
14 substantial evidence that there is need for an  
15 emergency rule.

16 MS. EULER: Okay.

17 CHAIRMAN: And we are done with that.  
18 And we are done with emergency rule-making as  
19 of today.

20 MS. DUNN: Okay. Now, we did have some  
21 additional things to review, but we can do  
22 those next week. We may run short on some  
23 time next week, so if the Board is okay with  
24 that, you may give a directive to draft  
25 emergency rule, but we may not bring it back



1 to the Board for review before August 28th.

2 Does that make sense?

3 CHAIRMAN: Does that make sense? Does  
4 that make sense?

5 MS. EULER: Yeah.

6 MS. DUNN: Because we're going to be  
7 short time frames.

8 MS. EULER: And I would encourage and  
9 ask that since we aren't going to have time to  
10 bring stuff back, that the Board members read  
11 group-two rules and the group-three rules when  
12 we get them, and if there is anything that  
13 raises concern or questions, let Becky know  
14 ASAP so we can make any proposed changes to  
15 the rules so that when we look at them next  
16 week, we're all ready to go. We've all looked  
17 at the rules, we've all addressed our  
18 concerns, and we're ready to approve as they  
19 are.

20 CHAIRMAN: So, we have two. When will  
21 we have three in our hands?

22 MS. EULER: We will get three as soon  
23 as Sarah gets them done, and we hope that will  
24 be this week.

25 CHAIRMAN: Okay. So, you have two in

1     your hands, you'll have three very shortly,  
2     and you should have any concerns about those  
3     ready to go when you get here next week.

4             MS. EULER:   Right.

5             MR. STALTER:   When do you need  
6     comments, Becky?

7             MS. EULER:   For you, Bill, 7:00  
8     tonight.

9             MS. EULER:   Everybody else, you could  
10    get them by the end of Thursday.

11            MS. DUNN:   When do you need them?

12            MS. EULER:   I think if you could get  
13    them by the close of business on Thursday or  
14    first thing Friday morning.   For those of you  
15    who are wondering why I'm harassing Bill, Bill  
16    was very prompt and timely in having his  
17    responses in, and I gave him a gold star for  
18    punctuality.

19            MR. STALTER:   And I'm not going to  
20    make it this week.   That's why I'm asking.   I  
21    mean, when it -- kind of a cutoff date so  
22    that you can incorporate it into the blended  
23    comments.

24            MS. EULER:   Well, for the group-three  
25    rules?

1           MR. STALTER: Yeah. I mean, I see  
2 group three. I'm thinking of --

3           MS. EULER: We haven't -- when we get  
4 them, we'll include a notice as to when we  
5 need comments by.

6           MR. STALTER: Okay.

7           MS. EULER: Because I don't know when  
8 we're going to get them.

9           CHAIRMAN: Anything else?

10          MS. EULER: Hang on just a minute. I  
11 just got an e-mail that may be somewhat  
12 relevant.

13          MR. REINHARD: Turn the tape off.

14          MS. DUNN: Board members, we still  
15 need to go back into close, so don't be  
16 packing up your bags yet.

17          MR. REINHARD: Turn your computer off.

18          UNIDENTIFIED: Don't pack your gear up  
19 yet.

20          MR. REINHARD: Todd, go ahead. Tell  
21 her how your wigwags were on when we were in  
22 St. Louis.

23          MS. DUNN: So, we're going -- next  
24 Tuesday, 9:00.

25          MS. RUSSELL: And then maybe Wednesday.

1 MS. DUNN: Maybe Wednesday.

2 MS. EULER: But we hope to be done on  
3 Tuesday. Okay. I have nothing more.

4 CHAIRMAN: Okay. All right. So, we  
5 need a motion to go into closed, and --

6 MR. FRAKER: I'll make a motion to go  
7 into closed.

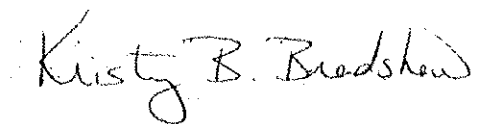
8 MR. MAHN: Second.

9 CHAIRMAN: There it is. Thank you all  
10 for coming.

11 (Off the record)

I, Kristy B. Bradshaw, a Certified Court Reporter in the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on August 19, 2009; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 18<sup>th</sup> day of September, 2009.



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KRISTY B. BRADSHAW, CCR

**August 19**

**Board Meeting Addendum Working Documents**

**Date**

Draft SB1 Implementation GROUP III

**Public Comments**

**Date**

Bill Stalter August 19 2009 comments

Don Otto's Comments for 8-19

**File**

*PDF*

**File**

*PDF*

*PDF*

**August 19**

**Board Meeting Addendum Working Documents**  
**Draft SB1 Implementation GROUP III**

SB1 Implementation – Group III

436.456. Purchaser cancellation

At any time before final disposition, or before the  
2 funeral or burial services, facilities, or merchandise described in a  
3 preneed contract are furnished, the purchaser may cancel the contract,  
4 if designated as revocable, without cause. In order to cancel the  
5 contract the purchaser shall:

6 (1) In the case of a joint account-funded preneed contract,  
7 deliver written notice of the cancellation to the seller and the financial  
8 institution. Within fifteen days of receipt of notice of the cancellation,  
9 the financial institution shall distribute all deposited funds to the  
10 purchaser. Interest shall be distributed as provided in the agreement  
11 with the seller and purchaser;

12 (2) In the case of an insurance-funded preneed contract, deliver  
13 written notice of the cancellation to the seller. Within fifteen days of  
14 receipt of notice of the cancellation, the seller shall notify the  
15 purchaser that the cancellation of the contract shall not cancel any life  
16 insurance funding the contract and that insurance cancellation is  
17 required to be made in writing to the insurer;

18 (3) In the case of a trust-funded preneed contract, deliver  
19 written notice of the cancellation to the seller and trustee. Within  
20 fifteen days of receipt of notice of the cancellation, the trustee shall  
21 distribute one hundred percent of the trust property including any  
22 percentage of the total payments received on the trust-funded contract  
23 that have been withdrawn from the account under section 436.430.4 but  
24 excluding the income, to the purchaser of the contract;

25 (4) In the case of a guaranteed installment payment contract  
26 where the beneficiary dies before all installments have been paid, the  
27 purchaser shall pay the seller the amount remaining due under the  
28 contract in order to receive the goods and services set out in the  
29 contract, otherwise the purchaser or their estate will receive full credit  
30 for all payments the purchaser has made towards the cost of the  
31 beneficiary's funeral at the provider current prices.

Comment [K1]: Could set out what  
written notice or notify shall entail.  
Notarization required?

Comment [K2]: Is there a minimum  
amount that purchaser must receive?  
Need a rule?

Comment [K3]: For consistency  
with trust funded contract refunds,  
the seller may include contract  
provisions allowing it to regain  
accrued interest. In the absence of  
such language, a regulation may be  
needed to govern the parties' rights  
to interest.

Comment [K4]: May purchaser assign  
policy to new party instead of cancelling?  
Need a rule?

Comment [K5]: The reference to  
"100% of the trust property" is  
confusing. Who must bear the risk of  
the account value? I would think the  
intent would be a refund of payments  
less the origination fee.



**436.457. Seller cancellation**

1. A seller shall have the right to cancel a trust-funded  
2 or joint-account funded preneed contract if the purchaser is in default  
3 of any installment payment for over sixty days.

4 2. Prior to cancelling the contract, the seller shall notify the  
5 purchaser and provider in writing that the contract shall be cancelled  
6 if payment is not received within thirty days of the postmarked date of  
7 the notice. The notice shall include the amount of payments due, the  
8 date the payment is due, and the date of cancellation.

9 3. If the purchaser fails to remit the payments due within thirty  
10 days of the postmarked date of the notice, then the seller, at its option,  
11 may either cancel the contract or may continue the contract as a  
12 nonguaranteed contract where the purchaser will receive full credit for  
13 all payments the purchaser has made into the trust towards the cost of  
14 the beneficiary's funeral service or merchandise from the provider.

15 4. Upon cancellation by the seller under this section, eighty-five  
16 percent of the contract payments shall be refunded to the  
17 purchaser. All remaining funds shall be distributed to the seller.

Comment [K6]: Seller gets maximum  
of 15% of payments plus income if any,  
right? Need a rule?

**436.458. Purchaser change of provider**

1. A purchaser may select an alternative provider as the  
2 designated provider under the original contract if the purchaser  
3 notifies the seller and original provider in writing of the purchaser's  
4 intent, stating the name of the alternative provider and the alternative  
5 provider consents to the new designation. Purchasers shall not be  
6 penalized or assessed any additional fee or cost for such transfer of the  
7 provider designation.

**Comment {K7}:** Once a customer selects a different provider, the seller has the option to either establish a trust where the new provider receives credit for all principal or pay principal and income to the new provider?

8 2. The seller shall pay the newly designated provider all  
9 payments owed to the original provider under the contract. The newly  
10 designated provider shall assume all rights, duties, obligations, and  
11 liabilities as the original provider under the contract. Interest shall  
12 continue to be allocated to the seller as provided under the contract.

**Comment {K8}:** Can 15% be retained by the original provider based on 436.430?

13 3. In the case of a trust funded contract and upon written notice  
14 to the seller of the purchaser's intent to select an alternative provider  
15 under subsection 1 of this section, the seller shall either continue the  
16 trust with the new provider in place of, and to receive all payment  
17 owed to, the original provider under the original agreement, or pay to  
18 the new trust all of the trust property, including principal and income.

**Comment {K9}:** Could define what counts as notice to the seller from the purchaser, but wouldn't have to. Notarized?

**Comment {K10}:** If the alternative provider elects to transfer the trust, it should receive the trust value (as opposed to payments plus income). These transfers could take time to effect.

#### 436.460. Seller annual reports

1. Each seller shall file an annual report with the board  
2 which shall contain the following information:

Comment [K11]: May want to require by rule that a board form be used. I would not promulgate the form itself as a rule, as then any change to that form would require a new rule.

3 (1) The contract number of each preneed contract sold since the  
4 filing of the last report with an indication of, and whether it is funded  
5 by a trust, insurance or joint account;

Comment [K12]: May want to define the highlighted items, but wouldn't have to

6 (2) The total number and total face value of preneed contracts  
7 sold since the filing of the last report;

8 (3) The contract amount of each preneed contract sold since the  
9 filing of the last report, identified by contract;

10 (4) The name, address, and license number of all preneed agents  
11 authorized to sell preneed contracts on behalf of the seller;

12 (5) The date the report is submitted and the date of the last  
13 report;

Comment [K13]: The aggregate market value as of the report date.

14 (6) The list including the name, address, contract number and  
15 whether it is funded by a trust, insurance or joint account of all  
16 Missouri preneed contracts fulfilled, cancelled or transferred by the  
17 seller during the preceding calendar year;

Comment [O14]: What is "the list"

18 (7) The name and address of each provider with whom it is under  
19 contract;

20 (8) The name and address of the person designated by the seller  
21 as custodian of the seller's books and records relating to the sale of  
22 preneed contracts;

23 (9) Written consent authorizing the board to order an  
24 investigation, examination and, if necessary, an audit of any joint or  
25 trust account established under sections 436.400 to 436.520, designated  
26 by depository or account number;

Comment [K15]: May want to require by rule that a board form be used for written consents.

Comment [K16]: May want to define the terms investigation, examination and audit by rule.

27 (10) Written consent authorizing the board to order an  
28 investigation, examination and if necessary an audit of its books and  
29 records relating to the sale of preneed contracts; and

30 (11) Certification under oath that the report is complete and  
31 correct attested to by an officer of the seller. The seller or officer shall  
32 be subject to the penalty of making a false affidavit or declaration.

Comment [K17]: Should be a part of the report form required by rule.

33 2. A seller that sells or has sold trust-funded preneed contracts  
34 shall also include in the annual report required by section 1 of this  
35 section:

36 (1) The name and address of the financial institution in which it  
37 maintains a preneed trust account and the account numbers of such  
38 trust accounts;

Comment [K18]: Require name of trust officer by rule?

39 (2) The trust fund balance as reported in the previous year's  
40 report;

41 (3) The current face value of the trust fund;

Comment [K19]: Could try to define highlighted terms by rule

42 (4) Principal contributions received by the trustee since the  
43 previous report;

Comment [K20]: Grand total or individual amounts? Every individual contribution, regardless of amount, right?

44 (5) Total trust earnings and total distributions to the seller since  
45 the previous report;

46 (6) Authorization of the board to request from the trustee a copy  
47 of any trust statement, as part of an investigation, examination or audit  
48 of the preneed seller;

49 (7) Total expenses, excluding distributions to the seller, since the  
50 previous report; and

Comment [K21]: When (how) do sellers have to report individual contract data?

51 (8) Certification under oath that the information required by  
52 subdivisions (1) to (7) of this subsection is complete and correct and  
53 attested to by a corporate officer of the trustee. The trustee shall be  
54 subject to the penalty of making a false affidavit or declaration.

Comment [K22]: Should be part of report form required by rule.

55 3. A seller that sells or who has sold joint account-funded  
56 preneed contracts shall also include in the annual report required by  
57 subsection 1 of this section:

58 (1) The name and address of the financial institution in Missouri  
59 in which it maintains the joint account and the account numbers for  
60 each joint account;

61 (2) The amount on deposit in each joint account;

Comment [K23]: Could define highlighted terms by rule.

62 (3) The joint account balance as reported in the previous year's  
63 report;

64 (4) Principal contributions placed into each joint account since

65 the filing of the previous report;

66 (5) Total earnings since the previous report;

67 (6) Total distributions to the seller from each joint account since  
68 the previous report;

69 (7) Total expenses deducted from the joint account, excluding  
70 distributions to the seller, since the previous report; and

71 (8) Certification under oath that the information required by  
72 subdivisions (1) to (7) of this subsection is complete and correct and  
73 attested to by an authorized representative of the financial  
74 institution. The affiant shall be subject to the penalty of making a false  
75 affidavit or declaration.

Comment [K24]: Should be part of board form required by rule.

76 4. A seller that sells or who has sold any insurance-funded  
77 preneed contracts shall also include in the annual report required by  
78 subsection 1 of this section:

Comment [K25]: The Board may want to give thought to a spreadsheet format for reporting joint accounts.

79 (1) The name and address of each insurance company issuing  
80 insurance to fund a preneed contract sold by the seller during the  
81 preceding year;

82 (2) The status and total face value of each policy;

Comment [K26]: Could define highlighted terms by rule. Status as relevant to the board?

83 (3) The amount of funds the seller directly received on each  
84 contract and the date the amount was forwarded to any insurance  
85 company; and

86 (4) Certification under oath that the information required by  
87 subsections 1 to 3 of this section is complete and correct attested to by  
88 an authorized representative of the insurer. The affiant shall be  
89 subject to the penalty of making a false affidavit or declaration.

Comment [K27]: Should be part of board form required by rule.

90 5. Each seller shall remit an annual reporting fee in an amount  
91 established by the board by rule for each preneed contract sold in the  
92 year since the date the seller filed its last annual report with the  
93 board. This reporting fee shall be paid annually and may be collected  
94 from the purchaser of the preneed contract as an additional charge or  
95 remitted to the board from the funds of the seller. The reporting fee  
96 shall be in addition to any other fees authorized under sections 436.400  
97 to 436.520.

Comment [K28]: Need rule – setting amounts, deadlines, how and where to remit, etc.

Comment [K29]: Will need to address by rule how to do this in transition – how those who haven't filed an annual report before have to do this.

98 6. All reports required by this section shall be filed by the thirty-  
99 first day of October of each year or by the date established by the

Comment [K30]: If want different that 10/31/09, need to establish by rule. Also should address Oct. 2009 by rule if first transition year will be different than subsequent years. Coordinate transition timeframes with other transition dates.

100 board by rule, Annual reports filed after the date provided herein shall  
101 be subject to a late fee in an amount established by rule of the board.

Comment [K31]: Need rule  
Can there be a waiver of late fee?

102 7. If a seller fails to file the annual report on or before its due  
103 date, his or her preneed seller license shall automatically be suspended  
104 until such time as the annual report is filed and all applicable fees have  
105 been paid.

Comment [K32]: May need a rule.  
Need to specify that automatic suspension  
takes effect on Nov. 1 (immediately after  
reporting deadline)?

Comment [K33]: "Automatic"  
suspensions without notice could  
cause problems for both the licensee  
and the Board. The validity of any  
contracts written during the  
suspension would be in doubt.

106 8. This section shall apply to contracts entered into before  
107 August 28, 2009.

Comment [K34]: Clarify -- does this  
mean applies to contracts before 08/28/09  
only or also?

**436.465. Record retention**

**A seller shall maintain:**

**2 (1) Adequate records of all preneed contracts and related**  
**3 agreements with providers, trustees of a preneed trust, and financial**  
**4 institutions holding a joint account established under sections 436.400**  
**5 to 436.520;**

**6 (2) Records of preneed contracts, including financial institution**  
**7 statements and death certificates, shall be maintained by the seller for**  
**8 the duration of the contract and for no less than five years after the**  
**9 performance or cancellation of the contract.**

**Comment [K35]:** Could define highlighted terms by rule. Look to requirements as a fiduciary?

**Comment [K36]:** Adequate records for trust funded contracts should include line item breakdown of individual contracts with balances, value and income/expenses.

**Comment [K37]:** Maintained within the state of Missouri in format that is accessible and will not degrade over required preservation time, can be copied or printed, may be outside of Mo for good cause with prior approval of board?

**Comment [K38]:** The five year period is intended to cover the 'open' audit period. To the extent the trust is audited with passing colors, the seller could be free to begin disposing of records less than 5 years after performance.

**436.470. Complaints/Board inspections/Subpoenas/AG**

1. Any person may file a complaint with the board to  
2 notify the board of an alleged violation of this chapter. The board shall  
3 investigate each such complaint.

4 2. The board shall have authority to conduct inspections and  
5 investigations of providers, sellers, and preneed agents and conduct  
6 financial examinations of the books and records of providers, sellers,  
7 and preneed agents and any trust or joint account to determine  
8 compliance with sections 436.400 to 436.520, or to determine whether  
9 grounds exist for disciplining a person licensed or registered under  
10 sections 333.310 to 333.340, RSMo, at the discretion of the board and  
11 with or without cause. The board shall conduct a financial examination  
12 of the books and records of each seller as authorized by this section at  
13 least once every five years, subject to available funding.

Comment [K39]: May want to develop by rule.

Comment [K40]: The term 'financial examination' provides the Board flexibility in structuring a review process of sellers.

14 3. Upon determining that an inspection, investigation,  
15 examination, or audit shall be conducted, the board shall issue a notice  
16 authorizing an employee or other person appointed by the board to  
17 perform such inspection, investigation, examination, or audit. The  
18 notice shall instruct the person appointed by the board as to the scope  
19 of the inspection, investigation, examination or audit.

Comment [K41]: Could define by rule and/or develop a form Is notice to licensee required?

20 4. The board shall not appoint or authorize any person to  
21 conduct an inspection, investigation, examination, or audit under this  
22 section if the individual has a conflict of interest or is affiliated with  
23 the management of, or owns a pecuniary interest in, any person subject  
24 to inspection, investigation, examination, or audit under chapter 333,  
25 RSMo, or sections 436.400 to 436.520.

Comment [K42]: Could define these terms by rule

26 5. The board may request that the director of the division of  
27 professional registration, the director of the department of insurance,  
28 financial institutions and professional registration, or the office of the  
29 attorney general designate one or more investigators or financial  
30 examiners to assist in any investigation, examination, or audit, and  
31 such assistance shall not be unreasonably withheld.

32 6. The person conducting the inspection, investigation, or audit  
33 may enter the office, premises, establishment, or place of business of  
34 any seller or licensed provider of preneed contracts, or any office,  
35 premises, establishment, or place where the practice of selling or  
36 providing preneed funerals is conducted, or where such practice is

Comment [K43]: Could clarify that no prior notice required and that applies during normal business hours and/or 8-5 Monday through Fri?



37 advertised as being conducted for the purpose of conducting the  
38 inspection, investigation, examination, or audit.

39 7. Upon request by the board, a licensee or registrant shall make  
40 the books and records of the licensee or registrant available to the  
41 board for inspection and copying at any reasonable time, including, any  
42 insurance, trust, joint account, or financial institution records deemed  
43 necessary by the board to determine compliance with sections 436.400  
44 to 436.520.

Comment [K44]: Clarify that board includes their agents, investigators and inspectors?

Comment [K45]: How far ahead of time?

45 8. The board shall have the power to issue subpoenas to compel  
46 the production of records and papers by any licensee, trustee or  
47 registrant of the board. Subpoenas issued under this section shall be  
48 served in the same manner as subpoenas in a criminal case.

Comment [K46]: Could develop a form. May want to set out in rule process for board to issue subpoena

49 9. All sellers, providers, preneed agents, and trustees shall  
50 cooperate with the board or its designee, the division of finance, the  
51 department of insurance, financial institutions and professional  
52 registration, and the office of the attorney general in any inspection,  
53 investigation, examination, or audit brought under this section.

54 10. This section shall not be construed to limit the board's  
55 authority to file a complaint with the administrative hearing  
56 commission charging a licensee or registrant with any actionable  
57 conduct or violation, regardless of whether such complaint exceeds the  
58 scope of acts charged in a preliminary public complaint filed with the  
59 board and whether any public complaint has been filed with the board.

60 11. The board, the division of finance, the department of  
61 insurance, financial institutions and professional registration, and the  
62 office of the attorney general may share information relating to any  
63 preneed inspection, investigation, examination, or audit.

Comment [K47]: Consider developing a Memorandum of Understanding?

64 12. If an inspection, investigation, examination, or audit reveals  
65 a violation of sections 436.400 to 436.520, the office of the attorney  
66 general may initiate a judicial proceeding to:

Comment [K48]: May initiate independently, right?

67 (1) Declare rights;

68 (2) Approve a nonjudicial settlement;

69 (3) Interpret or construe the terms of the trust;

70 (4) Determine the validity of a trust or of any of its terms;

71 (5) Compel a trustee to report or account;

72 (6) Enjoin a seller, provider, or preneed agent from performing  
73 a particular act;

74 (7) Enjoin a trustee from performing a particular act or grant to  
75 a trustee any necessary or desirable power;

76 (8) Review the actions of a trustee, including the exercise of a  
77 discretionary power;

78 (9) Appoint or remove a trustee;

79 (10) Determine trustee liability and grant any available remedy  
80 for a breach of trust;

81 (11) Approve employment and compensation of preneed agents;

82 (12) Determine the propriety of investments;

83 (13) Determine the timing and quantity of distributions and  
84 dispositions of assets; or

85 (14) Utilize any other power or authority vested in the attorney  
86 general by law.

**436.480. Purchaser's death/incapacity**

**Comment [K49]:** This section needs to be consistent with any enforceable right of sepulcher designation.

Upon the death or legal incapacity of a purchaser, all  
2 rights and remedies granted to the purchaser under sections 436.400 to  
3 436.520 shall be enforceable by and accrue to the benefit of the  
4 purchaser's legal representative or his or her estate, and all payments  
5 otherwise payable to the purchaser shall be paid to that person.

**436.485. Criminal penalties/Ch. 407 violation**

1. Any person, including the officers, directors,  
2 partners, agents, or employees of such person, who shall knowingly and  
3 willfully violate or assist or enable any person to violate any provision  
4 of sections 436.400 to 436.520 by incompetence, misconduct, gross  
5 negligence, fraud, misrepresentation, or dishonesty is guilty of a class  
6 C felony. Each violation of any provision of sections 436.400 to 436.520  
7 constitutes a separate offense and may be prosecuted individually. The  
8 attorney general shall have concurrent jurisdiction with any local  
9 prosecutor to prosecute under this section.

10 2. Any violation of the provisions of sections 436.400 to 436.520  
11 shall constitute a violation of the provisions of section 407.020, RSMo.  
12 In any proceeding brought by the attorney general for a violation of the  
13 provisions of sections 436.400 to 436.520, the court may order all relief  
14 and penalties authorized under chapter 407, RSMo, and, in addition to  
15 imposing the penalties provided for in sections 436.400 to 436.520, order  
16 the revocation or suspension of the license or registration of a  
17 defendant seller, provider, or preneed agent.

**436.490. Provider cease business**

1. A provider that intends to sell or otherwise dispose  
2 of all or a majority of its business assets, or its stock if a corporation,  
3 shall notify the board at least sixty days prior to selling or otherwise  
4 disposing of its business assets or stock, or ceasing to do business as a  
5 provider, and shall file a notification report on a form established by  
6 the board;

Comment [K50]: Need a form and a rule.

7 2. The report required by this section shall include:

Comment [K51]: Set out suggested format (e.g., Excel spreadsheet)?

8 (1) The name, phone number, and address of the purchasers of  
9 any outstanding preneed contract for which the licensee is the  
10 designated provider;

Comment [O52]: Will provider have to notify each purchaser?

11 (2) The name and license numbers of all sellers authorized to  
12 designate the licensee as a provider in a preneed contract;

13 (3) The name, address, and license number of the provider  
14 assuming or agreeing to assume the licensee's obligations as a provider  
15 under a preneed contract, if any;

Comment [K53]: Does this refer to "if any" preneed contracts? There must be a provider to each preneed contract, right?

16 (4) The name, address, and phone number of a custodian who  
17 will maintain the books and records of the provider containing  
18 information about preneed contracts in which the licensee is or was  
19 formerly designated as provider;

20 (5) A final annual report containing the information required by  
21 section 436.460;

22 (6) The date the provider intends to sell or otherwise dispose of  
23 its business assets or stock, or cease doing business; and

24 (7) Any other information required by any other applicable  
25 statute or regulation enacted pursuant to state or federal law.

Comment [K54]: Could do rule to require other information

26 3. Within three days after the provider sells or disposes of its  
27 assets or stock or ceases doing business, the former provider shall  
28 notify each seller in writing that the former provider has sold or  
29 disposed of its assets or stock or has ceased doing business.

Comment [K55]: Could develop by rule what is required in written notice

**436.500. Seller cease business**

1. A seller that intends to sell or otherwise dispose of all  
2 or a majority of its business assets or its stock shall notify the board at  
3 least sixty days prior to selling or otherwise disposing of its assets or  
4 stock, or ceasing to do business as a seller, and shall file a notification  
5 report on a form established by the board.

Comment [K56]: Need a form and a rule

6 2. The report required by this section shall include:

7 (1) A notarized and signed statement from the person assuming  
8 or agreeing to assume the obligations of the seller indicating that the  
9 assuming seller has been provided with a copy of the seller's final  
10 annual report and has consented to assuming the outstanding  
11 obligations of the seller;

Comment [K57]: Will the Board use its audit powers to provide some assurance to buyers?

12 (2) In lieu of the notarized statement required by subdivision (1)  
13 of this subsection, the seller may file a plan detailing how the assets of  
14 the seller will be set aside and used to service all outstanding preneed  
15 contracts sold by the seller; and

Comment [K58]: Could develop by rule. Set out requirements and leave format to seller?

16 (3) Any other information required by any other applicable  
17 statute or regulation enacted pursuant to state or federal law.

Comment [K59]: Could develop by rule. Maybe trust statement or bank/insurance statement showing balances?

18 3. Within thirty days after assuming the obligations of a seller  
19 under this section, the assuming seller shall:

20 (1) Notify each provider in writing that the former seller has  
21 sold or disposed of its assets or stock or has ceased doing business; and

Comment [K60]: Could define by rule

22 (2) Provide written notification to the purchasers of each  
23 preneed contract assumed by the seller indicating that the former  
24 seller has transferred ownership or has ceased doing business.

Comment [K61]: Could define by rule. Notify each purchaser individually, right (not all by one publication)?

25 4. Nothing in this section shall be construed to require the board  
26 to audit, inspect, investigate, examine, or edit the books and records of  
27 a seller subject to the provisions of this section nor shall this section  
28 be construed to amend, rescind, or supersede any duty imposed on, or  
29 due diligence required of, an entity assuming the obligations of the  
30 seller.

31 5. The office of the attorney general shall have the authority to  
32 initiate legal action to compel or otherwise ensure compliance with this  
33 section by a former provider licensee.

**436.505. Credit life**

A preneed contract may offer the purchaser the option  
2 to acquire and maintain credit life insurance on the life of the  
3 purchaser. Such insurance shall provide for the payment of death  
4 benefits to the seller in an amount equal to the total of all contract  
5 payments unpaid as of the date of such purchaser's death, and shall be  
6 used solely to make those unpaid payments. Any such credit life  
7 insurance shall be provided by a duly authorized insurance company  
8 and the preneed contract shall clearly identify the name of the insurer  
9 and the amount of payment allocated to the premium payment for the  
10 credit life. No seller or provider may provide any form of self insured  
11 credit life.

**436.510. Provider may demand payment from trustee**

If a seller shall fail to make timely payment of an  
2 amount due a purchaser or a provider under the provisions of sections  
3 436.400 to 436.520, the purchaser or provider, as appropriate, shall have  
4 the right, in addition to other rights and remedies against such seller,  
5 to make demand upon the trustee of the preneed trust for the contract  
6 to distribute to the purchaser or provider from the trust, as damages,  
7 an amount equal to all deposits made into the trust for the contract.

Comment [K62]: Need a regulation  
setting out conditions (timing and  
release) for trustee to be protected.



**436.520. Rulemaking authority**

1. The board shall promulgate and enforce rules for  
2 administration and enforcement of sections 436.400 to 436.520 including  
3 the establishment of the amount of any fees authorized thereunder for  
4 the transaction of its business and for standards of service and practice  
5 to be followed for the licensing and registration of providers, sellers,  
6 and preneed agents deemed necessary for the public good and  
7 consistent with the laws of this state. Such fees shall be set at a level  
8 to produce revenue which does not substantially exceed the cost and  
9 expense of administering this chapter.

Comment [K63]:

10 2. Any rule or portion of a rule, as that term is defined in section  
11 536.010, RSMo, that is created under the authority delegated in this  
12 section shall become effective only if it complies with and is subject to  
13 all of the provisions of chapter 536, RSMo, and, if applicable, section  
14 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable  
15 and if any of the powers vested with the general assembly under  
16 chapter 536, RSMo, to review, to delay the effective date, or to  
17 disapprove and annul a rule are subsequently held unconstitutional,  
18 then the grant of rulemaking authority and any rule proposed or  
19 adopted after August 28, 2009, shall be invalid and void.

***Section 1. Closed records***

The board shall maintain as a closed and confidential  
2 record, not subject to discovery unless the person provides written  
3 consent for disclosure, all personal information about any individual  
4 preneed purchaser or beneficiary, including but not limited to name,  
5 address, Social Security number, financial institution account numbers,  
6 and any health information disclosed in the preneed contract or any  
7 document prepared in conjunction with the preneed contract; provided,  
8 however, that the board may disclose such confidential information  
9 without the consent of the person involved in the course of voluntary  
10 interstate exchange of information; or in the course of any litigation  
11 concerning that person or the provider, seller, or sales agent involved  
12 with the preneed contract; or pursuant to a lawful request or to other  
13 administrative or law enforcement agencies acting within the scope of  
14 their statutory authority. In any such litigation, the board and its  
15 attorneys shall take reasonable precautions to ensure the protection of  
16 such information from disclosure to the public.

**August 19**

**Public Comments**

Bill Stalter August 19 2009 comments

14 of both the seller and the purchaser or under a pay-on-death  
15 designation or as required to pay reasonable expenses of administering  
16 the account.

17 3. All consideration paid by the purchaser under a joint account-  
18 funded contract shall be deposited into a joint account as authorized  
19 by this section within ten days of receipt of payment by the seller.

20 4. The financial institution shall hold, invest, and reinvest funds  
21 deposited under this section in other accounts offered to depositors by  
22 the financial institutions as provided in the written agreement of the  
23 purchaser and the seller, provided the financial institution shall not  
24 invest or reinvest any funds deposited under this section in term life  
25 insurance or any investment that does not reasonably have the  
26 potential to gain income or increase in value.

27 5. Income generated by preneed funds deposited under this  
28 section shall be used to pay the reasonable expenses of administering  
29 the account as charged by the financial institution and the balance of  
30 the income shall be distributed or reinvested upon fulfillment of the  
31 contract, cancellation or transfer pursuant to the provisions of this  
32 chapter.

33 6. Within fifteen days after a provider and a witness certifies to  
34 the financial institution in writing that the provider has furnished the  
35 final disposition, funeral, and burial services and facilities, and  
36 merchandise as required by the preneed contract, or has provided  
37 alternative funeral benefits for the beneficiary under special  
38 arrangements made with the purchaser, the financial institution shall  
39 distribute the deposited funds to the seller if the certification has been  
40 approved by the purchaser. The seller shall pay the provider within  
41 ten days of receipt of funds.

42 7. Any seller, provider, or preneed agent shall not procure or  
43 accept a loan against any investment, or asset of, or belonging to a joint  
44 account. As of August 28, 2009, it shall be prohibited to use any  
45 existing preneed contract as collateral or security pledged for a loan,  
46 or take preneed funds of any existing preneed contract as a loan or for  
47 any purpose other than as authorized by this chapter.


436.456. At any time before final disposition, or before the  
2 funeral or burial services, facilities, or merchandise described in a  
3 preneed contract are furnished, the purchaser may cancel the contract,

Summary of Comments on SB 0001 (0404.05) Establishes licensing and contract requirements for preneed funeral contract sellers, providers, and seller agents.


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This page contains no comments

4 if designated as revocable, without cause. In order to cancel the  
5 contract the purchaser shall:

6 (1) In the case of a joint account-funded preneed contract,  
7 deliver written notice of the cancellation to the seller and the financial  
8 institution. Within fifteen days of receipt of notice of the cancellation,  
9 the financial institution shall distribute all deposited funds to the  
10 purchaser. Interest shall be distributed as provided in the agreement  
11 with the seller and purchaser; 

12 (2) In the case of an insurance-funded preneed contract, deliver  
13 written notice of the cancellation to the seller. Within fifteen days of  
14 receipt of notice of the cancellation, the seller shall notify the  
15 purchaser that the cancellation of the contract shall not cancel any life  
16 insurance funding the contract and that insurance cancellation is  
17 required to be made in writing to the insurer;

18 (3) In the case of a trust-funded preneed contract, deliver  
19 written notice of the cancellation to the seller and trustee. Within  
20 fifteen days of receipt of notice of the cancellation, the trustee shall  
21 distribute <sup>2</sup>one hundred percent of the trust property including any  
22 percentage of the total payments received on the trust-funded contract  
23 that have been withdrawn from the account under section 436.430.4 but  
24 <sup>3</sup>excluding the income, to the purchaser of the contract; 

25 (4) In the case of a guaranteed installment payment contract  
26 where the beneficiary dies before all installments have been paid, the  
27 purchaser shall pay the seller the amount remaining due under the  
28 contract in order to receive the goods and services set out in the  
29 contract, otherwise the purchaser or their estate will receive full credit  
30 for all payments the purchaser has made towards the cost of the  
31 beneficiary's funeral at the provider current prices.

436.457. 1. A seller shall have the right to cancel a trust-funded  
2 or joint-account funded preneed contract if the purchaser is in default  
3 of any installment payment for over sixty days.

4 2. Prior to cancelling the contract, the seller shall notify the  
5 purchaser and provider in writing that the contract shall be cancelled  
6 if payment is not received within thirty days of the postmarked date of  
7 the notice. The notice shall include the amount of payments due, the  
8 date the payment is due, and the date of cancellation.

9 3. If the purchaser fails to remit the payments due within thirty

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Number: 1 Author: Bill Subject: Note Date: 8/12/2009 1:49:27 PM

For consistency with trust funded contract refunds, the seller may include contract provisions allowing it to regain accrued interest. In the absence of such language, a regulation may be needed to govern the parties' rights to interest.

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Number: 2 Author: Bill Subject: Highlight Date: 8/12/2009 1:49:44 PM

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Number: 3 Author: Bill Subject: Highlight Date: 8/12/2009 1:50:07 PM

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Number: 4 Author: Bill Subject: Note Date: 8/12/2009 1:55:53 PM


The reference to "100% of the trust property" is confusing. Who must bear the risk of the account value? I would think the intent would be a refund of payments less the origination fee.

10 days of the postmarked date of the notice, then the seller, at its option,  
11 may either cancel the contract or may continue the contract as a  
12 nonguaranteed contract where the purchaser will receive full credit for  
13 all payments the purchaser has made into the trust towards the cost of  
14 the beneficiary's funeral service or merchandise from the provider.

15 4. Upon cancellation by the seller under this section, eighty-five  
16 percent of the contract payments shall be refunded to the  
17 purchaser. All remaining funds shall be distributed to the seller.

436.458. 1. A purchaser may select an alternative provider as the  
2 designated provider under the original contract if the purchaser  
3 notifies the seller and original provider in writing of the purchaser's  
4 intent, stating the name of the alternative provider and the alternative  
5 provider consents to the new designation. Purchasers shall not be  
6 penalized or assessed any additional fee or cost for such transfer of the  
7 provider designation.

8 2. The seller shall pay the newly designated provider all  
9 payments owed to the original provider under the contract. The newly  
10 designated provider shall assume all rights, duties, obligations, and  
11 liabilities as the original provider under the contract. Interest shall  
12 continue to be allocated to the seller as provided under the contract.

13 3. In the case of a trust funded contract and upon written notice  
14 to the seller of the purchaser's intent to select an alternative provider  
15 under subsection 1 of this section, the seller shall either continue the  
16 trust with the new provider in place of, and to receive all payment  
17 owed to, the original provider under the original agreement, or pay to  
18 the new trust all of the trust property, including principal and income. 

436.460. 1. Each seller shall file an annual report with the board  
2 which shall contain the following information:

3 (1) The contract number of each preneed contract sold since the  
4 filing of the last report with an indication of, and whether it is funded  
5 by a trust, insurance or joint account;

6 (2) The total number and total face value of preneed contracts  
7 sold since the filing of the last report;

8 (3) The contract amount of each preneed contract sold since the  
9 filing of the last report, identified by contract;

10 (4) The name, address, and license number of all preneed agents  
11 authorized to sell preneed contracts on behalf of the seller;



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Number: 1 Author: Bill Subject: Highlight Date: 8/12/2009 4:57:00 PM

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Number: 2 Author: Bill Subject: Note Date: 8/12/2009 4:58:03 PM

If the alternative provider elects to transfer the trust, it should receive the trust value (as opposed to payments plus income). These transfers could take time to effect.

12           (5) The date the report is submitted and the date of the last  
13 report;

14           (6) The list including the name, address, contract number and  
15 whether it is funded by a trust, insurance or joint account of all  
16 Missouri preneed contracts fulfilled, cancelled or transferred by the  
17 seller during the preceding calendar year;

18           (7) The name and address of each provider with whom it is under  
19 contract;

20           (8) The name and address of the person designated by the seller  
21 as custodian of the seller's books and records relating to the sale of  
22 preneed contracts;


23           (9) Written consent authorizing the board to order an  
24 investigation, examination and, if necessary, an audit of any joint or  
25 trust account established under sections 436.400 to 436.520, designated  
26 by depository or account number;


27           (10) Written consent authorizing the board to order an  
28 investigation, examination and if necessary an audit of its books and  
29 records relating to the sale of preneed contracts; and

30           (11) Certification under oath that the report is complete and  
31 correct attested to by an officer of the seller. The seller or officer shall  
32 be subject to the penalty of making a false affidavit or declaration.

33           2. A seller that sells or has sold trust-funded preneed contracts  
34 shall also include in the annual report required by section 1 of this  
35 section:

36           (1) The name and address of the financial institution in which it  
37 maintains a preneed trust account and the account numbers of such  
38 trust accounts;

39           (2) The trust fund balance as reported in the previous year's  
40 report; 

41           (3) The current face value of the trust fund; 

42           (4) Principal contributions received by the trustee since the  
43 previous report;

44           (5) Total trust earnings and total distributions to the seller since  
45 the previous report;

46           (6) Authorization of the board to request from the trustee a copy  
47 of any trust statement, as part of an investigation, examination or audit  
48 of the preneed seller;

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Number: 1 Author: Bill Subject: Note Date: 8/12/2009 2:17:54 PM  
I think the intent would be the aggregate payment balance of the trust.

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Number: 2 Author: Bill Subject: Note Date: 8/12/2009 2:19:44 PM  
The aggregate market value as of the report date.

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49           (7) Total expenses, excluding distributions to the seller, since the  
50 previous report; and

51           (8) Certification under oath that the information required by  
52 subdivisions (1) to (7) of this subsection is complete and correct and  
53 attested to by a corporate officer of the trustee. The trustee shall be  
54 subject to the penalty of making a false affidavit or declaration. <sup>1</sup>

55           3. A seller that sells or who has sold joint account-funded  
56 preneed contracts shall also include in the annual report required by  
57 subsection 1 of this section:

58           (1) The name and address of the financial institution in Missouri  
59 in which it maintains the joint account and the account numbers for  
60 each joint account;

61           (2) The amount on deposit in each joint account;


62           (3) The joint account balance as reported in the previous year's  
63 report;

64           (4) Principal contributions placed into each joint account since  
65 the filing of the previous report;

66           (5) Total earnings since the previous report;

67           (6) Total distributions to the seller from each joint account since  
68 the previous report;

69           (7) Total expenses deducted from the joint account, excluding  
70 distributions to the seller, since the previous report; and

71           (8) Certification under oath that the information required by  
72 subdivisions (1) to (7) of this subsection is complete and correct and  
73 attested to by an authorized representative of the financial  
74 institution. The affiant shall be subject to the penalty of making a false  
75 affidavit or declaration. <sup>2</sup>

76           4. A seller that sells or who has sold any insurance-funded  
77 preneed contracts shall also include in the annual report required by  
78 subsection 1 of this section:

79           (1) The name and address of each insurance company issuing  
80 insurance to fund a preneed contract sold by the seller during the  
81 preceding year;

82           (2) The status and total face value of each policy;

83           (3) The amount of funds the seller directly received on each  
84 contract and the date the amount was forwarded to any insurance  
85 company; and

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Number: 1 Author: Bill Subject: Note Date: 8/12/2009 2:39:51 PM  
When (how) do sellers have to report individual contract data?

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Number: 2 Author: Bill Subject: Note Date: 8/12/2009 2:40:45 PM  
The Board may want to give thought to a spreadsheet format for reporting joint accounts.

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86           (4) Certification under oath that the information required by  
87 subsections 1 to 3 of this section is complete and correct attested to by  
88 an authorized representative of the insurer. The affiant shall be  
89 subject to the penalty of making a false affidavit or declaration.


90           5. Each seller shall remit an annual reporting fee in an amount  
91 established by the board by rule for each preneed contract sold in the  
92 year since the date the seller filed its last annual report with the  
93 board. This reporting fee shall be paid annually and may be collected  
94 from the purchaser of the preneed contract as an additional charge or  
95 remitted to the board from the funds of the seller. The reporting fee  
96 shall be in addition to any other fees authorized under sections 436.400  
97 to 436.520.


98           6. All reports required by this section shall be filed by the thirty-  
99 first day of October of each year or by the date established by the  
100 board by rule. Annual reports filed after the date provided herein shall  
101 be subject to a late fee in an amount established by rule of the board.

102           7. If a seller fails to file the annual report on or before its due  
103 date, his or her preneed seller license shall automatically be suspended  
104 until such time as the annual report is filed and all applicable fees have  
105 been paid. 

106           8. This section shall apply to contracts entered into before  
107 August 28, 2009.

436.465. A seller shall maintain:

2           (1) Adequate records of all preneed contracts and related  
3 agreements with providers, trustees of a preneed trust, and financial  
4 institutions holding a joint account established under sections 436.400  
5 to 436.520; 

6           (2) Records of preneed contracts, including financial institution  
7 statements and death certificates, shall be maintained by the seller for  
8 the duration of the contract and for no less than five years after the  
9 performance or cancellation of the contract. 

436.470. 1. Any person may file a complaint with the board to  
2 notify the board of an alleged violation of this chapter. The board shall  
3 investigate each such complaint.

4           2. The board shall have authority to conduct inspections and  
5 investigations of providers, sellers, and preneed agents and conduct  
6 financial examinations of the books and records of providers, sellers,

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Number: 1 Author: Bill Subject: Note Date: 8/12/2009 2:43:36 PM

"Automatic" suspensions without notice could cause problems for both the licensee and the Board. The validity of any contracts written during the suspension would be in doubt.

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Number: 2 Author: Bill Subject: Note Date: 8/12/2009 2:45:26 PM

Adequate records for trust funded contracts should include line item breakdown of individual contracts with balances, value and income/expenses.

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Number: 3 Author: Bill Subject: Note Date: 8/12/2009 2:50:43 PM

The five year period is intended to cover the 'open' audit period. To the extent the trust is audited with passing colors, the seller could be free to begin disposing of records less than 5 years after performance.

7 and preneed agents and any trust or joint account to determine  
8 compliance with sections 436.400 to 436.520, or to determine whether  
9 grounds exist for disciplining a person licensed or registered under  
10 sections 333.310 to 333.340, RSMo, at the discretion of the board and  
11 with or without cause. The board shall conduct a financial examination   
12 of the books and records of each seller as authorized by this section at  
13 least once every five years, subject to available funding.

14 8. Upon determining that an inspection, investigation,  
15 examination, or audit shall be conducted, the board shall issue a notice  
16 authorizing an employee or other person appointed by the board to  
17 perform such inspection, investigation, examination, or audit. The  
18 notice shall instruct the person appointed by the board as to the scope  
19 of the inspection, investigation, examination or audit.

20 4. The board shall not appoint or authorize any person to  
21 conduct an inspection, investigation, examination, or audit under this  
22 section if the individual has a conflict of interest or is affiliated with  
23 the management of, or owns a pecuniary interest in, any person subject  
24 to inspection, investigation, examination, or audit under chapter 333,  
25 RSMo, or sections 436.400 to 436.520.

26 5. The board may request that the director of the division of  
27 professional registration, the director of the department of insurance,  
28 financial institutions and professional registration, or the office of the  
29 attorney general designate one or more investigators or financial  
30 examiners to assist in any investigation, examination, or audit, and  
31 such assistance shall not be unreasonably withheld.

32 6. The person conducting the inspection, investigation, or audit  
33 may enter the office, premises, establishment, or place of business of  
34 any seller or licensed provider of preneed contracts, or any office,  
35 premises, establishment, or place where the practice of selling or  
36 providing preneed funerals is conducted, or where such practice is  
37 advertised as being conducted for the purpose of conducting the  
38 inspection, investigation, examination, or audit.

39 7. Upon request by the board, a licensee or registrant shall make  
40 the books and records of the licensee or registrant available to the  
41 board for inspection and copying at any reasonable time, including, any  
42 insurance, trust, joint account, or financial institution records deemed  
43 necessary by the board to determine compliance with sections 436.400



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Number: 1 Author: Bill Subject: Highlight Date: 8/12/2009 4:39:00 PM

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Number: 2 Author: Bill Subject: Note Date: 8/12/2009 2:53:14 PM

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The term 'financial examination' provides the Board flexibility in structuring a review process of sellers.

44 to 436.520.

45           8. The board shall have the power to issue subpoenas to compel  
46 the production of records and papers by any licensee, trustee or  
47 registrant of the board. Subpoenas issued under this section shall be  
48 served in the same manner as subpoenas in a criminal case.

49           9. All sellers, providers, preneed agents, and trustees shall  
50 cooperate with the board or its designee, the division of finance, the  
51 department of insurance, financial institutions and professional  
52 registration, and the office of the attorney general in any inspection,  
53 investigation, examination, or audit brought under this section.

54           10. This section shall not be construed to limit the board's  
55 authority to file a complaint with the administrative hearing  
56 commission charging a licensee or registrant with any actionable  
57 conduct or violation, regardless of whether such complaint exceeds the  
58 scope of acts charged in a preliminary public complaint filed with the  
59 board and whether any public complaint has been filed with the board.


60           11. The board, the division of finance, the department of  
61 insurance, financial institutions and professional registration, and the  
62 office of the attorney general may share information relating to any  
63 preneed inspection, investigation, examination, or audit.

64           12. If an inspection, investigation, examination, or audit reveals  
65 a violation of sections 436.400 to 436.520, the office of the attorney  
66 general may initiate a judicial proceeding to:

- 67           (1) Declare rights;  
68           (2) Approve a nonjudicial settlement;  
69           (3) Interpret or construe the terms of the trust;  
70           (4) Determine the validity of a trust or of any of its terms;  
71           (5) Compel a trustee to report or account;  
72           (6) Enjoin a seller, provider, or preneed agent from performing  
73 a particular act;  
74           (7) Enjoin a trustee from performing a particular act or grant to  
75 a trustee any necessary or desirable power;  
76           (8) Review the actions of a trustee, including the exercise of a  
77 discretionary power;  
78           (9) Appoint or remove a trustee;  
79           (10) Determine trustee liability and grant any available remedy  
80 for a breach of trust;

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- 81 (11) Approve employment and compensation of preneed agents;  
82 (12) Determine the propriety of investments;  
83 (13) Determine the timing and quantity of distributions and  
84 dispositions of assets; or  
85 (14) Utilize any other power or authority vested in the attorney  
86 general by law.

436.480. Upon the death or legal incapacity of a purchaser, all   
2 rights and remedies granted to the purchaser under sections 436.400 to  
3 436.520 shall be enforceable by and accrue to the benefit of the  
4 purchaser's legal representative or his or her estate, and all payments  
5 otherwise payable to the purchaser shall be paid to that person.

436.485. 1. Any person, including the officers, directors,  
2 partners, agents, or employees of such person, who shall knowingly and  
3 willfully violate or assist or enable any person to violate any provision  
4 of sections 436.400 to 436.520 by incompetence, misconduct, gross  
5 negligence, fraud, misrepresentation, or dishonesty is guilty of a class  
6 C felony. Each violation of any provision of sections 436.400 to 436.520  
7 constitutes a separate offense and may be prosecuted individually. The  
8 attorney general shall have concurrent jurisdiction with any local  
9 prosecutor to prosecute under this section.

10 2. Any violation of the provisions of sections 436.400 to 436.520  
11 shall constitute a violation of the provisions of section 407.020, RSMo.  
12 In any proceeding brought by the attorney general for a violation of the  
13 provisions of sections 436.400 to 436.520, the court may order all relief  
14 and penalties authorized under chapter 407, RSMo, and, in addition to  
15 imposing the penalties provided for in sections 436.400 to 436.520, order  
16 the revocation or suspension of the license or registration of a  
17 defendant seller, provider, or preneed agent.

436.490. 1. A provider that intends to sell or otherwise dispose  
2 of all or a majority of its business assets, or its stock if a corporation,  
3 shall notify the board at least sixty days prior to selling or otherwise  
4 disposing of its business assets or stock, or ceasing to do business as a  
5 provider, and shall file a notification report on a form established by  
6 the board.

7 2. The report required by this section shall include:

- 8 (1) The name, phone number, and address of the purchasers of  
9 any outstanding preneed contract for which the licensee is the

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1 Number: 1 Author: Bill Subject: Highlight Date: 8/12/2009 4:41:43 PM

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Number: 2 Author: Bill Subject: Note Date: 8/12/2009 4:43:29 PM  
This section needs to be consistent with any enforceable right of sepulcher designation.

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10 designated provider;

11 (2) The name and license numbers of all sellers authorized to  
12 designate the licensee as a provider in a preneed contract;

13 (3) The name, address, and license number of the provider  
14 assuming or agreeing to assume the licensee's obligations as a provider  
15 under a preneed contract, if any;

16 (4) The name, address, and phone number of a custodian who  
17 will maintain the books and records of the provider containing  
18 information about preneed contracts in which the licensee is or was  
19 formerly designated as provider;

20 (5) A final annual report containing the information required by  
21 section 436.460;


22 (6) The date the provider intends to sell or otherwise dispose of  
23 its business assets or stock, or cease doing business; and

24 (7) Any other information required by any other applicable  
25 statute or regulation enacted pursuant to state or federal law.

26 3. Within three days after the provider sells or disposes of its  
27 assets or stock or ceases doing business, the former provider shall  
28 notify each seller in writing that the former provider has sold or  
29 disposed of its assets or stock or has ceased doing business.

436.500. 1. A seller that intends to sell or otherwise dispose of all  
2 or a majority of its business assets or its stock shall notify the board at  
3 least sixty days prior to selling or otherwise disposing of its assets or  
4 stock, or ceasing to do business as a seller, and shall file a notification  
5 report on a form established by the board.

6 2. The report required by this section shall include:

7 (1) A notarized and signed statement from the person assuming  
8 or agreeing to assume the obligations of the seller indicating that the  
9 assuming seller has been provided with a copy of the seller's final  
10 annual report and has consented to assuming the outstanding  
11 obligations of the seller; 

12 (2) In lieu of the notarized statement required by subdivision (1)  
13 of this subsection, the seller may file a plan detailing how the assets of  
14 the seller will be set aside and used to service all outstanding preneed  
15 contracts sold by the seller; and

16 (3) Any other information required by any other applicable  
17 statute or regulation enacted pursuant to state or federal law.

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1 Number: 1 Author: Bill Subject: Highlight Date: 8/12/2009 4:47:38 PM

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Number: 2 Author: Bill Subject: Note Date: 8/12/2009 4:50:33 PM  
Will the Board use its audit powers to provide some assurance to buyers?

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18           3. Within thirty days after assuming the obligations of a seller  
19 under this section, the assuming seller shall:


20           (1) Notify each provider in writing that the former seller has  
21 sold or disposed of its assets or stock or has ceased doing business; and

22           (2) Provide written notification to the purchasers of each  
23 preneed contract assumed by the seller indicating that the former  
24 seller has transferred ownership or has ceased doing business.

25           4. Nothing in this section shall be construed to require the board  
26 to audit, inspect, investigate, examine, or edit the books and records of  
27 a seller subject to the provisions of this section nor shall this section  
28 be construed to amend, rescind, or supersede any duty imposed on, or  
29 due diligence required of, an entity assuming the obligations of the  
30 seller.

31           5. The office of the attorney general shall have the authority to  
32 initiate legal action to compel or otherwise ensure compliance with this  
33 section by a former provider licensee.

          436.505. A preneed contract may offer the purchaser the option  
2 to acquire and maintain credit life insurance on the life of the  
3 purchaser. Such insurance shall provide for the payment of death  
4 benefits to the seller in an amount equal to the total of all contract  
5 payments unpaid as of the date of such purchaser's death, and shall be  
6 used solely to make those unpaid payments. Any such credit life  
7 insurance shall be provided by a duly authorized insurance company  
8 and the preneed contract shall clearly identify the name of the insurer  
9 and the amount of payment allocated to the premium payment for the  
10 credit life. No seller or provider may provide any form of self insured  
11 credit life.

          436.510. If a seller shall fail to make timely payment of an  
2 amount due a purchaser or a provider under the provisions of sections  
3 436.400 to 436.520, the purchaser or provider, as appropriate, shall have  
4 the right, in addition to other rights and remedies against such seller,  
5 to make demand upon the trustee of the preneed trust for the contract  
6 to distribute to the purchaser or provider from the trust, as damages,  
7 an amount equal to all deposits made into the trust for the contract. 

          436.520. 1. The board shall promulgate and enforce rules for  
2 administration and enforcement of sections 436.400 to 436.520 including  
3 the establishment of the amount of any fees authorized thereunder for



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Number: 1 Author: Bill Subject: Highlight Date: 8/12/2009 4:51:15 PM

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Number: 2 Author: Bill Subject: Note Date: 8/12/2009 4:52:02 PM  
Need a regulation setting out conditions (timing and release) for trustee to be protected.

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4 the transaction of its business and for standards of service and practice  
5 to be followed for the licensing and registration of providers, sellers,  
6 and preneed agents deemed necessary for the public good and  
7 consistent with the laws of this state. Such fees shall be set at a level  
8 to produce revenue which does not substantially exceed the cost and  
9 expense of administering this chapter.

10 2. Any rule or portion of a rule, as that term is defined in section  
11 536.010, RSMo, that is created under the authority delegated in this  
12 section shall become effective only if it complies with and is subject to  
13 all of the provisions of chapter 536, RSMo, and, if applicable, section  
14 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable  
15 and if any of the powers vested with the general assembly under  
16 chapter 536, RSMo, to review, to delay the effective date, or to  
17 disapprove and annul a rule are subsequently held unconstitutional,  
18 then the grant of rulemaking authority and any rule proposed or  
19 adopted after August 28, 2009, shall be invalid and void.

Section 1. The board shall maintain as a closed and confidential  
2 record, not subject to discovery unless the person provides written  
3 consent for disclosure, all personal information about any individual  
4 preneed purchaser or beneficiary, including but not limited to name,  
5 address, Social Security number, financial institution account numbers,  
6 and any health information disclosed in the preneed contract or any  
7 document prepared in conjunction with the preneed contract; provided,  
8 however, that the board may disclose such confidential information  
9 without the consent of the person involved in the course of voluntary  
10 interstate exchange of information; or in the course of any litigation  
11 concerning that person or the provider, seller, or sales agent involved  
12 with the preneed contract; or pursuant to a lawful request or to other  
13 administrative or law enforcement agencies acting within the scope of  
14 their statutory authority. In any such litigation, the board and its  
15 attorneys shall take reasonable precautions to ensure the protection of  
16 such information from disclosure to the public.

[333.121. 1. The board may refuse to issue any certificate  
2 of registration or authority, permit or license required pursuant to  
3 this chapter for one or any combination of causes stated in  
4 subsection 2 of this section. The board shall notify the applicant  
5 in writing of the reasons for the refusal and shall advise the

This page contains no comments

**August 19**

**Public Comments**

Don Otto's Comments for 8-19

### Don Otto's Comments

K1 Has not been a problem with current 436 requirements don't think rule needed.

K2 No rule needed should be in contract.

K3 Could have rule that says if contract is silent to how interest is distributed, it is refunded to purchaser

K4. This is a joint account with both names on it. Don't see assignment as an issue.

K5 Comment about risk is wrong. The purchaser gets whatever the trust is worth at time of cancellation plus the 10% back (if it was withheld) but no income. It was worded this way on purpose so as to not imply that there was a guarantee as to the trust value. No different than if you cash in a mutual fund that has lost value, the bank does not make up that loss. Sen. Scott's comment on this was "the funeral home/seller is not a bank, if the purchaser wants to invest the money himself, they should go just open up an account on their own."

K6 Once again, purchaser loses interest if they default and do not cure after given the chance. The funeral home is not a bank as Sen. Scott said several times.

K7-10 If the purchaser wants to change funeral homes, the Seller has a choice. First it can, almost literally, "white out" the old funeral home and write in the new funeral home on the contract (sorry, couldn't resist). In this case the new funeral home would get whatever would have been paid to the original funeral home at the time of need. So, if the first funeral home/seller retains the 15% allowed, then the new funeral home would be paid 85% plus the accumulated interest. This is fair as, otherwise, funeral home #2 would have "free sale staff" because funeral home number 1 was paying the expenses and salaries of the salespeople but funeral home #2 would get the benefit. The new funeral home steps into the shoes old funeral home as they exist at the time of the notice of transfer So the seller can keep the. So (K9) the seller CAN keep the 15%. If this happens both the seller and the new provider need to agree to abide by the original contracts. Probably need a rule to make it clear that the new provider must agree in writing to honor the terms of the original contract to effectuate the transfer

Alternatively, the Seller can, at its option pay all of the money that is in the trust at the time of the transfer which again, would not include the 15% if it was retained. The purpose of this was to avoid a situation where a seller was forced to be in a contractual relationship with a provider it did not want to do business with. A rule that said that, upon payment to the new provider under this section the original seller and trustee are relieved of all future contract obligations would be good, but need to make it clear it does not relieve them of any wrongdoing before the transfer.

K11 This does not seem to be a big problem currently but a lot more entities may be filling out forms in the future.

K13 not sure what this comment means?

O14 Probably should have said "A list that includes..." this would be a good one for a rule to make it clear what should be on the report under this paragraph.

K15 Board form probably a good idea.

K16 defining might cause more problems and restrict what can do.

K18 comment adds requirements not in statute

K19 Most of these terms have definitions from UTA and case law.

K20-21 Should be total amounts not per contract, if want to look at individual contracts board can do so.

K28 everybody very interested in what the charge should be and when need to start collecting it.

K31 I think there can be a waiver if put in the rule, says "as established by the board" and I think that gives leeway for waiver.

K32-33 Rule should say that any contracts sold during suspension are valid IF seller is reinstated. Not a lot different than if you let your corporate good standing lapse the reinstatement is retroactive to date of termination.

K34 I know it was meant to be "also" but this could be one to add to a consent bill cleaning up language.

K36 MFT can do that easily but not sure others can.

K37 Seems to me the records have to be available in Missouri to meet all of the requirements of inspection and cooperation

K38 I think statute is clear. 5 years after contract is either fulfilled or cancelled.

K39-40 if a rule be careful do not lose the flexibility the statute gives, the flexibility was there on purpose so the board does not have to do a full-blown "audit" as defined by a CPA.

K41 the word "notice" is used in a way that I think it is clear that we are talking about notice to the licensee, otherwise, the word "notice" does not make sense, would just be "appointment" of the investigator or something like that.

K42 Is there anything from other statutes or boards that is helpful here?

K43 per 41 above, I think notice of the investigation at least is required, but would be good to have a rule that entering premise would be during normal working hours otherwise could be abusive.

K44 I think you need board action here not just an employee.

K48 Is a question as to who does the inspection that triggers the authority of the AG to do what is in the list.

K49 Be careful not to confuse the beneficiary of the contract (the person being buried) and the purchaser that may not be the next-of-kin of the beneficiary. Also don't confuse right of sepulcher for the purchaser with the right to control contractual matters.

There are several issues here: First, the purchaser may not be the next-of-kin of the beneficiary. The next of kin decides what the final disposition will be. The next of kin, then, can override what is spelled out in a preneed even if the preneed has been paid in full and even if the deceased is the one that paid for it. Now, if the next of kin does override the preneed then the next of kin is responsible for paying for what they want to have done. The purchaser of the preneed in this instance is under no obligation to pay for what the next of kin wants if it is not what was in the preneed. This does cause conflicts and keeps attorneys fully employed but nothing in rule can really change that. "NEXT OF KIN ALWAYS WIN!" The new Right of Sepulcher law just makes it easier to designate who that next of kin is.

What THIS provision of 436 is dealing with is who controls the preneed if the purchaser dies or is incapacitated. It is NOT a right of sepulcher issue but is the same as who controls any contract when a person dies or is incapacitated. In other words, if a purchaser has made a Right of Sepulcher designation, it does not effect one way or the other who gets a refund on a contract the purchaser paid for.

## Additional Handouts – August 19, 2009



## Proposed Emergency Rule for Notice of Intent to Apply

Title: Filing of Notice of Intent to Apply

Purpose: This emergency rule describes the Board's procedure for filing a Notice of Intent to Apply for Licensure/Registration under the new requirements contained in Chapters 333 and 436 which will become effective on August 28, 2009 and the result of filing the Notice.

- (1) Any person wishing to conduct business as a preneed seller or preneed provider or wishing to register as a preneed sales agent (the "Applicant") must fully complete and file with the State Board a "Notice of Intent to Apply for Licensure/Registration" ("Notice of Intent") prior to engaging in any conduct for which a preneed seller license, a preneed provider license or a preneed sales agent registration is required. The Board shall provide the Notice of Intent as a .pdf document on its website. No fee shall be required to accompany the Notice of Intent. Only the official Notice of Intent form shall be accepted by the Board.
- (2) Applicants may file the Notice of Intent with the Board by hand delivery, by mail, by fax or by other electronic means such as e-mail. If the Notice of Intent is filed by fax or other electronic means, the Applicant shall also provide the original signed document to the Board by mail or other delivery method.
- (3) All Applicants must meet the requirements for licensure as set forth in Chapter 333, RSMo, and must certify that, to the best of their knowledge, they are eligible for licensure/registration.
- (4) If the Board determines that the Applicant lacks the statutory qualifications for licensure/registration, the Board may terminate the temporary authorization to practice under the Notice of Intent by notifying the Applicant in writing of the termination and the reason for the termination. An Applicant may apply for full licensure or registration even if the Board has terminated his/her authority to practice pursuant to the Notice of Intent.
- (5) Any Applicant who has filed a Notice of Intent must file their completed Application for licensure or registration with the Board no later than October 1, 2009.
- (6) The Applicant shall keep a copy of the Notice of Intent and shall prominently display this Notice of Intent as if it were a license or registration issued pursuant to Chapter 333, RSMo.

- (7) Any person with a filed Notice of Intent shall be authorized to engage in the practice of preneed selling, providing or as a sales agent, as so indicated on the Notice of Intent, provided that the Applicant has timely filed his/her Application for Licensure and/or Registration. This authorization to practice shall be effective from the date the Board receives the Notice of Intent and shall end on the date the Board either issues a license or registration or denies the application for licensure/registration or until midnight on December 31, 2009, whichever comes first. The Board shall promptly notify the Applicant of its decision to issue a license/registration or its denial of same.
- (8) Any conduct that may be cause for discipline that occurs between August 28, 2009 and December 31, 2009 shall be considered by the Board in its decision to issue or deny any Application for licensure and/or registration. In addition, if the Board issues a license or registration and later discovers conduct that would be cause for discipline occurred between August 28, 2009 and December 31, 2009, the Board shall have authority to seek discipline against the licensee or registree for that conduct as if the person were fully licensed or registered while operating under the authority of the Notice of Intent.

Authority: 333.011, 333.315, 333.320, 333.325 and 333.340

### **Proposed Emergency Rule Regarding Filing of Annual Reports**

Title: Filing of Annual Reports

Purpose: This emergency rule prescribes the Board's process for the filing of annual reports under the revised sections of Chapters 333 and 436.

For reporting year ending October 31, 2009, preneed sellers who were registered with the Board prior to August 28, 2009, may file an annual report as set forth in Section 436.021.2(3), RSMo (2000) to meet the annual report requirement of Section 436.460, RSMo, Supp. 2009.

Authority: 333.340 and 436.460



STATE OF MISSOURI  
DIVISION OF PROFESSIONAL REGISTRATION

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS  
3605 MISSOURI BOULEVARD  
P.O. BOX 423  
JEFFERSON CITY, MO 65102  
TELEPHONE (573) 751-0813  
TTY (800) 735-2986

**NOTICE OF INTENT**

I HEREBY NOTIFY THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS OF MY INTENT TO APPLY FOR A LICENSE/REGISTRATION AS A PRENEED SELLER, PROVIDER OR SALES AGENT AS INDICATED BELOW PURSUANT TO EMERGENCY RULE.

No Fee

FOR OFFICE USE ONLY

Date Received

Initials

Temporary Number

**INSTRUCTIONS**

Any person wishing to engage in the practice of preneed selling, providing or as a preneed sales agent must fully complete this form and provide it to the Board before engaging acting as a preneed seller, preneed provider or preneed sales agent.

- (1) This Notice of Intent shall serve as a temporary permit to practice until such time as the Applicant is either issued a license by the Board or the Board issues its notice of denial, or December 31, 2009, whichever comes first.
- (2) In addition, in order for this temporary permit to remain in effect, the Applicant must complete and file with the State Board his/her Application for full licensure/registration no later than October 31, 2009. If the Board has not received application for licensure/registration by October 31, 2009, this temporary permit shall be deemed null and void.
- (3) A single Notice of Intent may be used for the same person or entity seeking multiple licensure/registrations. However, a separate Notice of Intent shall be required for each person or entity. Any corporation or business entity must be authorized to conduct business in Missouri.

If you have a disability and require accommodations addressed by the Americans with Disabilities Act, please notify this office at the time of application to insure that reasonable accommodations are made for your needs. Notification must be made in writing and mailed to the Missouri State Board of Embalmers and Funeral Directors, P.O. Box 423, Jefferson City, Missouri 65102. Notification of needs must be received at least thirty (30) days in advance of any scheduled examination date. The text telephone number for the hearing impaired is (800) 735-2986.

PLEASE READ ALL CORRESPONDENCE THAT YOU RECEIVE FROM THE BOARD. IF IT CONTAINS VERY IMPORTANT INFORMATION.

Please check the box or boxes indicating the type(s) of licenses/registrations for which you intend to apply:

- ☐ Preneed Agent (must be individual)  
☐ Preneed Provider  
☐ Preneed Seller

**A. GENERAL INFORMATION**

1. Last Name	First Name	Middle Name	(or Corporate/Entity Name)	2. Social Security Number/ MO EIN (Required)
3. Present Address (Street, City, State, Zip)				4. Telephone Number
5. Mailing Address (Street, City, State, Zip)				6. Email Address
7. County of Residence	8. Date of Birth (if individual)			9. Gender (if individual)

B. If a "YES" response is listed in questions A through D, applicant must provide a written explanation on a separate sheet of paper with the applicant's signature notarized.

a. Have you ever had a professional license disciplined by another state or territory? If yes, explain fully.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
b. Have you ever been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States whether or not sentence was imposed (includes suspended imposition of sentence (SIS)). If yes, explain fully.	<input type="checkbox"/>	<input type="checkbox"/>
c. Have you ever been arrested, charged with or found guilty, or entered a plea of guilty or nolo contendere of a violation of any federal, state or municipal, drug or alcohol laws or rules whether or not sentence was imposed (includes suspended imposition of sentence (SIS)). If yes, explain fully.	<input type="checkbox"/>	<input type="checkbox"/>

- d. Have you ever been arrested, charged with, found guilty, or entered a plea of guilty or nolo contendere by a court (including a municipal court), pled guilty nolo contendere to any traffic offense resulting from or related to the use of drugs or alcohol, whether sentence was imposed, including a suspended imposition of sentence (SIS)? If yes, explain fully.

☐ ☐

**C. If the Applicant is a Corporation/Entity please complete this section:**

Registered Agent Name and Address:

Person in Charge of Business:

D. If applying for licensure as a Preneed Seller, please circle type of funding Trust Joint Account Insurance

Please list name(s) of preneed trustee, insurance company(ies), financial institution(s) holding joint accounts, as applicable: (attach pages, if needed)

E. If applying for registration as a preneed sales agent, please list all preneed sellers including name(s) and addresses: (attach pages, if needed)

F. Please list all licenses and numbers currently held that are issued by the State Board of Embroiders and Finishing Directors:

**F. AFFIDAVIT OF APPLICANT**

I, \_\_\_\_\_  
(APPLICANT SIGNATURE)

(PLEASE PRINT NAME)

If corporation/entity: \_\_\_\_\_  
Title

being first duly sworn upon my oath, state as follows:

- That I have personally completed the foregoing application fully and completely, without omission;
- That all the information and answers contained in the foregoing application and any attachments thereto are true and correct to my best knowledge and belief; and
- That I realize that I made this affidavit knowingly and that any false statements or material omission herein subjects me to criminal penalties for making a false affidavit under Section 575.050, RSMo 2000, as supplemented.
- I certify that to the best of my knowledge I am eligible for licensure or registration.
- If I am signing on behalf of a corporation or other entity that I have full authorization to sign on behalf of the entity.

**G. NOTARY SECTION**

STATE OF

COUNTY OF

MISSOURI

NOTARY PUBLIC SEAL/STAMP

SUBSCRIBED AND SWORN BEFORE ME

DAY OF \_\_\_\_\_, 20\_\_

NOTARY PUBLIC SIGNATURE

COMMISSION EXPIRES

NOTARY PUBLIC NAME (PRINTED OR PRINTED)

Emergency rules for Group 1 following 8-5-09 meeting

Emergency rule: Corporation must be represented by an attorney

Title: Practice by a licensed attorney

Purpose: This rule states when and how a party must be represented by a licensed attorney in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors.

(1) Any individual may present that individual's own case without a licensed attorney in a before the Missouri State Board of Embalmers and Funeral Directors in which the individual is contesting a decision of the Missouri State Board of Embalmers and Funeral Directors regarding denial or discipline of a license.

(2) Any individual may file an initial complaint on behalf of another person, including a corporation or other legal entity in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors but any and all proceedings and filings following the filing of the initial complaint shall be conducted by a licensed attorney.

(3) Except as set forth in section (2) of this rule, only a licensed attorney may represent any other person, including a corporation or other legal entity in matters before the Board. The filing of any document in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors by a licensed attorney, unless stated otherwise therein, shall be deemed an entry of appearance. An attorney not authorized to practice in Missouri shall enter an appearance in accordance with Missouri Supreme Court Rules.

Comment [L1]: Bar! raise the following. Could (1) and (2) be read more broadly than intended? Do we need (1) and (2) at all?

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Authorized by: 333.340 and 333.011(6)

Emergency rule: Payment is not determining factor of "practice of funeral directing"

Title: Practice of funeral directing; payment not determining factor

Purpose: This rule explains that the receiving of payment for providing funeral services is not the determining factor in identifying the practice of funeral directing.

(1) In determining whether a person, pursuant to 333.011(6), is engaging in the practice of funeral directing pursuant to 333.011(8), the Board shall consider all activities listed in 333.011(8).

(2) Receipt of payment by any person for any or all services provided pursuant to this Chapter or Chapter 436, RSMo shall not be a the determining factor

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in determining whether the person is engaging in the practice of funeral directing.

Authorized by: 333.340 and 333.011(8)

**Emergency rule: Pre-need seller and agent must be licensed in Missouri**

Title: Pre-need agent; requirements of agent's seller

Purpose: This rule explains that any licensed pre-need agent in the State of Missouri must be selling pre-need contracts on behalf of a seller who is also licensed in the state of Missouri.

- (1) Any pre-need agent licensed by the Missouri State Board of Embalmers and Funeral Directors to sell a pre-need contract for or on behalf of a seller must be the agent of a seller who is licensed to sell pre-need contracts by the Missouri State Board of Embalmers and Funeral Directors.

Authorized by: 333.340, 333.011(9), 333.320 and 333.325

**Emergency rule: "Final Disposition" as defined in Chapter 193**

Title: Use of term "final disposition" consistent with Chapter 193, RSMo

Purpose: This rule explains that use of the term "final disposition" in Chapters 333 and 436, RSMo shall be consistent with the definition of the term in Chapter 193, RSMo.

- (1) For purposes of Chapters 333 and 436, RSMo, final disposition shall be defined in accordance with the definition contained in Section 193.015(3), RSMo.
- (2) Use of the term final disposition in Chapters 333 and 436 shall be consistent with its use in Chapter 193, RSMo.

Authorized by: 333.340 and 333.011(10)

**Emergency rule: "Provider" includes funeral establishment that has agreed to undertake obligations of pre-need contracts pursuant to Chapter 436**

Title: Provider to include funeral establishments engaged in pre-need

Purpose: This rule explains that a provider in a pre-need contract includes, but is not limited to, a funeral establishment that has agreed to undertake the obligations of a pre-need contract under Chapter 436, RSMo.

- (1) As defined by Section 333.011(10), the provider of services under any pre-need contract pursuant to Chapter 436, RSMo shall include any licensed funeral establishment that has agreed to undertake the obligations of a pre-need contract pursuant to Chapter 436, RSMo.
- (2) And provider who is a licensed funeral establishment ~~ment~~ who has agreed to undertake the obligations of a pre-need contract pursuant to Chapter 436, RSMo, must meet all requirements of both a licensed funeral establishment and a pre-need provider pursuant to Chapters 333 and 436, RSMo.

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Authorized by 333.340 and 333.011(10), RSMo

#### Emergency rule: Display of License

Title: Licenses issued by the Missouri State Board of Embalmers and Funeral Directors must be displayed.

Purpose: This rule states that licensed establishments, funeral directors, embalmers, pre-need sellers, agents and providers must prominently display their license to practice issued by the Missouri State Board of Embalmers and Funeral Directors.

- (1) All licenses, and any and all duplicate copies thereof, issued by the Missouri State Board of Embalmers and Funeral Directors shall be prominently displayed at all times in a conspicuous location or manner easily accessible to the public for each office or place of business of the licensee.
- (2) All licenses shall be available at all times for inspection by any duly authorized agent of the Missouri State Board of Embalmers and Funeral Directors.
- (3) The Missouri State Board of Embalmers and Funeral Directors may cause a complaint to be filed with the Administrative Hearing Commission pursuant to Section 333.330, RSMo, for the failure of a licensee to display his or her license as required by Section 333.091 and this regulation.

Comment (L2): Do we need to include registrations in this too?

Authorized by 333.340, 333.091 and 333.330

#### Emergency rule: Corporate ownership of a corporate licensee

Title: Corporate ownership of a corporation holding a pre-need provider license.

Purpose: This rule prescribes the requirements regarding corporate ownership of a corporation that holds a pre-need provider license.

- (1) If the applicant for a pre-need provider license pursuant to Section 333.315, RSMo is a corporation or other legal entity, referred to as "applicant corporation" and it is owned by a corporation, referred to as "owner corporation":
  - (a) each owner, director, manager or controlling shareholder of the applicant corporation shall be eligible for licensure as if they were applying for licensure as an individual; and
  - (b) at least one owner, director, manager or controlling shareholder of the owner corporation shall be eligible for licensure as if they were applying for licensure as an individual.

Authority: 333.340 and 333.315

A compromise. It is my understanding that during the process of developing this legislation, the board's concern was for the management of the "applicant corporation" to be eligible for licensure but not the "owner corporation". It is also my understanding that the board did not express an opinion one way or the other during discussion of this issue. My thinking here is I think it would be very wise to have at least one person in management at the owner corporation who has knowledge and experience in the business.

**Emergency rule: Licensees must file application for new license if change in ownership.**

Title: New license required for change of ownership

Purpose: This rule states that a new license is required for a change in ownership of a pre-need seller.

(1) The pre-need seller license issued by the board is effective for a specific name of a person or entity authorized to conduct business in Missouri. The license issued by the board shall be displayed in a conspicuous location accessible to the general public at that location. Whenever the ownership, location or name of the Missouri licensed pre-need seller is changed, a new license shall be obtained.

(A) If a change of ownership is caused by the elimination of one (1) or more owners, for whatever reason (death, sale of interest, divorce, etc.) without the addition of any new owner(s), it is not necessary to obtain a



new pre-need seller license. However, a new application for a pre-need seller license form shall be filed as an amended application within thirty (30) days after the change of ownership. This form shall be filled out completely with correct, current information.

(B) A corporation is considered by law to be a separate person. If a corporation holds a Missouri pre-need seller's license, it is not necessary to obtain a new pre-need seller license or to file an amended application for a pre-need seller license if the owners of a minority interest in the stock change. However, as a separate person, if the corporation begins ownership of an entity which holds a Missouri pre-need seller license or ceases ownership of an entity which holds a Missouri pre-need seller license, a new pre-need seller license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

**Comment [L3]:** Do we need to say if majority interest changes, then a new license is required?

Authority: 333.340 and 333.320

**Emergency rule: Failure to renew a license within 2 years requires completion of application process**

Title: Failure to renew a license within 2 years; process required.

Purpose: This rule describes the process for a licensee who fails to renew his or her license within 2 years.

- (1) Any pre-need seller issued a license pursuant to Section 333.320, RSMo shall renew his or her license biennially and meet all requirements established pursuant to Section 333.320, RSMo;
- (2) Any pre-need seller shall be issued a new license by the board within two years of the renewal date upon completion of all renewal requirements contained in Section 333.320 and payment of appropriate fees set by the Board.
- (3) Any pre-need seller license not renewed within two years of the date of renewal shall be void.
- (4) Any pre-need seller whose license becomes void for failure to renew within two years of the renewal date who wishes to be licensed by the board must file a new application and meet all requirements of a new application pursuant to Section 333.320 and any corresponding validly promulgated rules of the board.

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Authority: Section 333.340 and 333.320

~~There is a concern. All this seems inconsistent with 333.320.4, RSMo.~~

**Emergency rule: Licensed funeral director must report each seller for whom he or she is an agent.**

Title: Funeral Director agent registration

Purpose: This rule establishes the reporting requirement for any funeral directors serving as sellers' agents.

- (1) Any funeral director acting as a pre-need agent shall report the name and address of each pre-need seller for whom the funeral director is authorized to sell, negotiate, or solicit pre-need contracts to the Board on a form prescribed by the Board.
- (2) Any funeral director shall also identify him or herself as acting as a pre-need agent on his or her biennial report form to the board by checking the appropriate box on the form prescribed by the board.

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Authority: Section 333.340 and 333.325.4

**Emergency rule: Pre-need agents must take Missouri law exam.**

Title: Certifying pre-need seller agents to take the Missouri law exam.

Purpose: This rule prescribes the process for certifying pre-need seller agents to take the Missouri law exam and a requirement for licensure.

- (1) All pre-need seller agents applying for licensure with the board shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam. Successful completion of the Law exam shall be a prerequisite to licensure. This exam may be taken any time after filing the Notice of Intent to Apply. Pre-need agent applicants must successfully complete the Missouri Law exam on or before December 31, 2009, prior to the expiration of the Notice of Intent to Apply. The Missouri Law exam covers knowledge of Chapter 333, RSMo and the rules governing the practice of embalming, funeral directing and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition and transportation of dead human bodies. The Missouri Law section also contains questions regarding Chapter 436, RSMo relating to pre-need statutes and Chapters 193 and 194, RSMo relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations and Occupational Safety and Health Administration (OSHA) requirements

as they apply to Missouri licensees. Notification of intent to take this examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination.

Authority: 333.340 and 333.325.5

**Emergency rule: Normal market fluctuation resulting in a shortage in a pre-need trust is not a basis for injunctive relief.**

Title: Normal market fluctuation is not a basis for injunctive relief.

Purpose: This rule provides that normal market fluctuation that result in a shortage to a pre-need trust or joint account do not constitute cause to seek an injunction against a seller of a pre-need contract.

- (1) Pursuant to Section 333.330.4, RSMo, the Missouri Board of Embalmers and Funeral Directors shall not be entitled to seek injunctive relief against a seller of a pre-need trust if there is a shortage greater than twenty percent of the total amount required to be held or deposited into the trust or joint account pursuant to Chapter 436 in the pre-need trust or joint account that is exclusively the result of normal fluctuations in the market.

Authority: Section 333.340 and 333.330

**Emergency rule: Financial welfare cause for injunction**

Title: Danger to financial welfare is cause for injunction.

Purpose: This rule states that serious danger to an individual's financial welfare is cause for the State Board of Embalmers and Funeral Directors to seek an injunction pursuant to Section 333.335.1(2), RSMo.

- (1) For purposes of Section 333.335, RSMo, the Missouri State Board of Embalmers and Funeral Directors shall be entitled to seek injunctive relief against any person from engaging in any business or practice authorized by a registration or authority, permit, or license issued under this chapter that presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or client or customer of the licensee or registrant.
- (2) For purposes of Section 333.335, RSMo, serious danger to the welfare of any resident or client or customer shall include, but is not limited to, the financial welfare of the resident, client or customer.

Authority: Section 333.340 and 333.335.

### Emergency Rules for Group 1 following 8-5-09 meeting

- If the Board has approved the rule to go forward, the word APPROVED appears before the rule.
- The approved emergency rules appear first in this document, pages 2-7, followed by the emergency rules still needing approval, pages 8-11.
- Rules from this group the Board determined were not emergency rules are now contained in a separate document.

APPROVED

Emergency rule: Preneed sellers and providers must be licensed and preneed seller agents must be registered in the State of Missouri to do business.

Title: Pre-need agent; requirements of the agent's seller

Purpose: This rule explains that any licensed pre-need agent in the State of Missouri must be selling pre-need contracts on behalf of a seller who is licensed in the state of Missouri.

- (1) Any pre-need agent registered by the Missouri State Board of Embalmers and Funeral Directors to sell a pre-need contract for or on behalf of a seller must be the agent of a seller who is licensed to sell pre-need contracts by the Missouri State Board of Embalmers and Funeral Directors.

Authorized by: 333.340, 333.011(9), 333.320 and 333.325

APPROVED

**Emergency rule: "Final Disposition" as defined in Chapter 193**

Title: Use of term "final disposition" consistent with Chapter 193, RSMo

Purpose: This rule explains that use of the term "final disposition" in Chapters 333 and 436, RSMo shall be consistent with the definition of the term in Chapter 193, RSMo.

- (1) For purposes of Chapters 333 and 436, RSMo, final disposition shall be defined in accordance with the definition contained in Section 193.015(3), RSMo.
- (2) Use of the term final disposition in Chapters 333 and 436 shall be consistent with its use in Chapter 193, RSMo.

Authorized by: 333.340 and 333.011(10)

APPROVED

**Emergency rule: "Provider" includes funeral establishment that has agreed to undertake obligations of pre-need contracts pursuant to Chapter 436**

Title: Provider to include funeral establishments engaged in pre-need

Purpose: This rule explains that a provider in a pre-need contract includes, but is not limited to, a funeral establishment that has agreed to undertake the obligations of a pre-need contract under Sections 436.400 through 436.520, RSMo.

- (1) As defined by Section 333.011(10), the provider of services under any pre-need contract pursuant to Sections 436.400 to 436.520, RSMo shall include any licensed funeral establishment that has agreed to undertake the obligations of a pre-need contract pursuant to Sections 436.400 to 436.520, RSMo.
- (2) Any provider who is a licensed funeral establishment who has agreed to undertake the obligations of a pre-need contract pursuant to Sections 436.400 to 436.520, RSMo, must meet all requirements of both a licensed funeral establishment and a pre-need provider pursuant to Chapter 333 and Sections 436.400 to 436.520, RSMo.

Authorized by 333.340 and 333.011(10), RSMo



APPROVED

**Emergency rule: Licensed funeral director must report each seller for whom he or she is an agent.**

Title: Funeral Director agent registration

Purpose: This rule establishes the reporting requirement for any funeral directors serving as sellers' agents.

- (1) Any funeral director acting as a pre-need agent shall report the name and address of each pre-need seller for whom the funeral director is authorized to sell, negotiate, or solicit pre-need contracts to the Board on a form prescribed by the Board.
- (2) Any funeral director shall also identify him or herself as acting as a pre-need agent on his or her biennial report form to the board by checking the appropriate box on the form prescribed by the board.

Authority: Section 333.340 and 333.325.4

APPROVED

**Emergency rule: Pre-need agents must take Missouri law exam.**

Title: Certifying pre-need seller agents to take the Missouri law exam.

Purpose: This rule prescribes the process for certifying pre-need seller agents to take the Missouri law exam and a requirement for registration.

All pre-need seller agents registering with the board shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam. Successful completion of the Law exam shall be a prerequisite to registration. This exam may be taken any time after filing the Notice of Intent to Apply. Pre-need agent applicants must successfully complete the Missouri Law exam on or before December 31, 2009, prior to the expiration of the Notice of Intent to Apply. The Missouri Law exam covers knowledge of Chapter 333, RSMo and the rules governing the practice of embalming, funeral directing and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition and transportation of dead human bodies. The Missouri Law section also contains questions regarding Sections 436.400 to 436.520, RSMo relating to pre-need statutes and Chapters 193 and 194, RSMo relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations and Occupational Safety and Health Administration (OSHA) requirements as they apply to Missouri licensees. Notification of intent to take this examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination.

Authority: 333.340 and 333.325.5

APPROVED

**Emergency rule: Financial welfare cause for injunction**

Title: Danger to financial welfare is cause for injunction.

Purpose: This rule states that serious danger to an individual's financial welfare is cause for the State Board of Embalmers and Funeral Directors to seek an injunction pursuant to Section 333.335.1(2), RSMo.

- (1) For purposes of Section 333.335, RSMo, the Missouri State Board of Embalmers and Funeral Directors shall be entitled to seek injunctive relief against any person from engaging in any business or practice authorized by a registration or authority, permit, or license issued under this chapter that presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or client or customer of the licensee or registrant.
- (2) For purposes of Section 333.335, RSMo, serious danger to the welfare of any resident or client or customer shall include, but is not limited to, the financial welfare of the resident, client or customer.

Authority: Section 333.340 and 333.335.

**Emergency rule: Corporate ownership of a corporate licensee**

Title: Corporate ownership of a corporation holding a pre-need provider license.

Purpose: This rule prescribes the requirements regarding corporate ownership of a corporation that holds a pre-need provider or seller's license.

(1) If the applicant for a pre-need provider or seller's license pursuant to Section 333.315, RSMo is a corporation or other legal entity, referred to as "applicant corporation" and it is owned by a corporation, referred to as "owner corporation":

- (a) each officer, director, manager or controlling shareholder of the applicant corporation shall be eligible for licensure as if they were applying for licensure as an individual; and

Authority: 333.340 and 333.315

**Emergency rule: Licensees must file application for new license if change in ownership.**

Title: New license required for change of ownership

Purpose: This rule states that a new license is required for a change in ownership of a pre-need provider or seller.

(1) The pre-need seller or provider's license issued by the board is effective for a specific name of a person or entity authorized to conduct business in Missouri. Whenever the ownership, location or name of the Missouri licensed pre-need seller or provider is changed, a new license shall be obtained.

(A) If a change of ownership is caused by the elimination of one (1) or more owners, for whatever reason (death, sale of interest, divorce, etc.) without the addition of any new owner(s), it is not necessary to obtain a new pre-need seller license. However, a new application for a pre-need seller license form shall be filed as an amended application within thirty (30) days after the change of ownership. This form shall be filled out completely with correct, current information.

(B) A corporation is considered by law to be a separate person. If a corporation holds a Missouri pre-need seller's license, it is not necessary to obtain a new pre-need seller license or to file an amended application for a pre-need seller license if the owners of a minority interest in the stock change. However, as a separate person, if the corporation begins ownership of an entity which holds a Missouri pre-need seller license or ceases ownership of an entity which holds a Missouri pre-need seller license, a new pre-need seller license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

**Comment [L1]:** Do we need to say if majority interest changes, then a new license is required?

Authority: 333.340 and 333.320

**Emergency rule: Display of License**

**Title:** Licenses issued by the Missouri State Board of Embalmers and Funeral Directors must be displayed.

**Purpose:** This rule states that pre-need sellers, providers and seller's agents must prominently display their license or registration to practice issued by the Missouri State Board of Embalmers and Funeral Directors.

- (1) All licenses or registrations, and any and all duplicate copies thereof, issued by the Missouri State Board of Embalmers and Funeral Directors shall be prominently displayed at all times in a conspicuous location or manner easily accessible to the public for each office or place of business of the licensee or registrant.
- (2) All licenses or registrations shall be available at all times for inspection by any duly authorized agent of the Missouri State Board of Embalmers and Funeral Directors.
- (3) The Missouri State Board of Embalmers and Funeral Directors may cause a complaint to be filed with the Administrative Hearing Commission pursuant to Section 333.330, RSMo, for the failure of a licensee or registrant to display his or her license or registration as required by Section 333.091 and this regulation.

**Comment [L2]:** Do we need to include registrations in this too?

Authorized by 333.340, 333.091 and 333.330

**Emergency rule: Normal market fluctuation resulting in a shortage in a pre-need trust is not a basis for injunctive relief.**

Title: Normal market fluctuation is not a basis for injunctive relief.

Purpose: This rule provides that normal market fluctuation that result in a shortage to a pre-need trust or joint account do not constitute cause to seek an injunction against a seller of a pre-need contract.

- (1) Pursuant to Section 333.330.4, RSMo, the Missouri State Board of Embalmers and Funeral Directors shall not be entitled to seek injunctive relief against a seller if there is a shortage in the preneed trust greater than twenty percent of the total amount required to be held or deposited into the trust pursuant to Sections 436.400 through 436.520, RSMo in the pre-need trust that is exclusively the result of normal fluctuations in the market.

Authority: Section 333.340 and 333.330

## Group 2 rules

### Rule re: single premium annuity contracts

Title: Replacement single premium annuity contracts

Purpose: This rule states that while only single premium annuity contracts can fund an insurance-funded preneed contract, purchasers may purchase replacement single premium annuity contracts during the contract period.

- (1) An insurance-funded preneed contract may be funded by an insurance policy or a single premium annuity contract.
- (2) An insurance-funded preneed contract may not be funded by an annuity other than a single premium annuity contract.
- (3) If a purchaser funds an insurance-funded preneed contract with a single premium annuity contract, the purchaser may replace the single premium annuity contract with another single premium annuity contract at any time in the duration of the preneed contract.
- (4) Any replacement single premium annuity contract must meet all the requirements of the initial annuity contract, Chapter 333, Chapter 436 and any other requirements under state or federal law.

Authority: 333.340 and 436.405

### Rule re: activities that do not constitute preneed under Chapter 436

Title: Activities that do not constitute preneed under Chapter 436

Purpose: This rule identifies activities that do not constitute preneed under Chapter 436 and do not require regulation for preneed under Chapter 436.

The following activities do not constitute a preneed contract under the terms and conditions of Chapter 436:

- (1) Sale of funeral merchandise where the purchaser takes immediate possession of the funeral merchandise;
- (2) The preplanning of funeral arrangements with a licensed funeral director where there is no exchange of payment or anything of value for the future services; and
- (3) Naming a funeral establishment as the beneficiary to a life insurance policy outside a preneed contract as defined by Section 436.405.1(7).

Authority: 333.340 and 436.405



Rule re: types of financing available; other financing still preneed

Title: Preneed contracts with non-compliant financing mechanisms are still subject to the provisions in Chapter 436.

Purpose: This rule identifies the acceptable funding mechanisms for preneed contracts.

(1) Preneed contracts shall only be funded by:

- (a) A preneed trust as defined by 436.405(8);
- (b) An insurance policy or single premium annuity contract as defined by § 436.405(3); or
- (c) A joint account as defined by § 436.405.4.

(2) Preneed contracts funded by any other mechanism shall be non-compliant with the requirements of Chapter 436. All non-compliant preneed contracts shall still be subject to regulation by the Board under Chapter 436.

Authority: 333.340 and 436.405

Rule re: meaning of final disposition

Title: Final disposition shall be used consistently with definition in § 193.015(3)

Purpose: This rule explains the use of the term final disposition as it relates to preneed contracts under Chapter 436.

- (1) For purposes of Chapters 333 and 436, the definition of the term final disposition shall be consistent with the definition of the term final disposition contained in Section 193.015(3);
- (2) For purposes of Chapters 333 and 436, the use of the term final disposition shall be consistent with the use of the term final disposition contained in Section 193.015(3)

Authority: 193.015, 333.340 and 436.405

Rule re: Cemetery exception

Title: Endowed care cemetery exception.

Purpose: This rule describes the exception to preneed contract requirements under Chapter 436 for endowed care cemeteries.

- (1) The provisions of sections 436.400 to 436.520 shall not apply to contracts or other arrangements sold by a cemetery operator for which payments

received by or on behalf of the purchaser are required to be placed in an endowed care fund, as defined by Chapter 214, or for which a deposit into a segregated account is required under Chapter 214.

- (2) The provisions of Chapter 436 shall apply to the contract sold by the operator as described in (1) above if the contract or arrangement includes services that may only be provided a licensed funeral director;
- (3) This exception to the requirements of Chapter 436 shall be contract specific.

Authority: 333.340 and 436.410

Rule re: seller obligations

Title: Provider and seller obligations under Chapter 436

Purpose: This rule clarifies the duties of the seller of a preneed contract.

Except as otherwise provided in Sections 436.400 to 436.520 and any rules validly promulgated pursuant to those sections:

- (1) The seller shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract;
- (2) Alternatively, the preneed contract may permit the purchaser to make payment directly to the trustee or insurance company named in the contract in lieu of making payment to the trustee;
- (3) All sellers of preneed contracts in the State of Missouri shall designate an individual within the seller's business who will accept notice regarding any actions of the Board on behalf of the seller. The designation shall be made in writing and provided to the Board. If the designee changes, the seller shall make the Board aware of the change in writing 5 business days prior to the change in designee becoming effective, or if the seller does not have notice 5 days prior, then within 3 business days of the change in designee.

Authority: 333.340 and 436.415

Rule re: clarification on pre-August 28, 2009 and post-August 28, 2009

Title: Grandfather clause

Purpose: This rule clarifies the treatment of contracts made prior to August 28, 2009.

- (1) Preneed contracts made before August 28, 2009 shall be considered to be in accordance with the revised sections of Chapter 333 and 436,

Authority 333.340, 436.412 and 436.415

Rule re: Provider and Seller requirements under the preneed contract

Title: Requirements for notice by provider under preneed contract

Purpose: This rule sets out the requirements for notice by a provider under a preneed contract.

- (1) A provider shall notify the Board within 15 days of authorizing or agreeing to allow a seller to designate himself or herself as the provider under a preneed contract. Such notice shall be in writing and shall include:
  - (a) Name and address of the seller;
  - (b) Name and address of the provider;
  - (c) License number of the seller;
  - (d) License number of the provider;
  - (e) Effective date of the authorization or agreement;
  - (f) Signature of the seller, provider, purchaser, and, if applicable, the seller's agent;
  - (g) Notice with the Board may be filed electronically but the original document shall be provided to the Board by mail following the electronic filing.
- (2) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the last signature on the agreement;
- (3) The contract must be signed by the purchaser, provider and seller or seller's agent of the preneed contract;
- (4) If an agent of the seller signs the contract, the seller must also sign the contract but need not be present at the time it is signed with the purchaser;
- (5) The purchaser of the preneed contract shall receive either a copy or original of the contract and upon request a copy of any agreements or contracts between the seller and provider regarding the purchaser's contract.
- (6) If the provider and seller are the same legal person, the provider must still provide notice as required by this Rule to the Board that he or she is the provider for the seller. However, a contract between the seller and provider, if the seller and provider is the same legal person, is not required.
- (7) If the provider and seller are the same legal person, the preneed contract and any other contracts or agreements necessary to the preneed contract must contain:
  - a. One signature line indicating that signature belongs both to the seller and provider; or
  - b. Separate signature lines for the seller and provider.

Authority: 333.3.40 and 436.420

Rule re: Contract requirements

Title: Consumer contract requirements

Purpose: This rule identifies requirements of all preneed contracts.

- (1) All preneed contracts and any agreements necessary to the preneed contract shall be in writing in Times New Roman or similar font in at least 8-point font size;
- (2) A preneed contract can contain both guaranteed and non-guaranteed items. Any preneed contract containing both guaranteed and non-guaranteed items shall clearly identify in writing in the contract that the contract contains both guaranteed and non-guaranteed items;
- (3) A preneed contract is voidable by order of a court of competent jurisdiction. Upon order of the court, the contract is voidable. Notice of the voidable contract must be provided to the seller and provider. The purchaser, upon notice, may then exercise the right to void the contract. Upon a valid court order and notice, a preneed contract is void.
- (4) All money under the preneed contract, including but not limited to payments, interest payments, and fees, is recoverable by the purchaser only if the purchaser elects to void the contract following receipt of a valid court order and notice to the seller and provider;
- (5) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the final signature – provider, purchaser, seller's agent or seller -- on the agreement;
- (6) The seller, or his agent, must provide the purchaser with a fully executed original or copy of the preneed contract within five business days of the effective date of the contract;
- (7) All preneed contracts executed in the State of Missouri shall be accompanied by a disclosure sheet containing all necessary consumer disclosures on a form prescribed by the Board;
- (8) Preneed contracts can be cancelled or rescinded pursuant to Chapter 436. The process for concluding the affairs of the preneed contract that is rescinded or cancelled shall be the same and the purchaser, seller and provider shall have the same rights and obligations under cancellation and rescission.
- (9) PUBLIC ASSISTANCE: STAFF WILL CONTACT MO HEALTHNET;  
RULE FOLLOWING CONTACT.

~~(10) REQUIRED EXISTING TERMS: RULE TO COME~~

DISCLOSURE SHEET AND REQUIREMENTS

Authority: 333.340 and 436.425

Rule re: trust funded contract requirements

Title: Requirements for deposit of and verification of payments

Purpose: This rule identifies what payments must be deposited into the preneed trust under a trust funded preneed contract and the seller's reporting requirements for deposits.

- (1) The seller of a preneed contract funded by a trust shall deposit all payments received pursuant to the terms of the preneed contract into the trust within sixty days of receipt of the funds by the seller, his agent or designee.
- (2) The seller need not deposit other payments such as fees or costs that are not terms of the contract in the trust.
- (3) Within 30 days of request by the purchaser, the seller shall provide to the purchaser under a preneed contract, a written statement of all deposits made to the trust. The written shall include a detailed description of all deposits made by type of deposit and date of deposit. The written statement shall also include the principal and interest paid to date for the trust. The written statement shall be signed by the seller.

Authority: 333.340 and 436.430

Rule re: Trustee investment restrictions

Title: Trustee investment restrictions under a trust funded preneed contract

Purpose: This rule identifies the investment restrictions of a trustee under a trust funded preneed contract.

- (1) A trustee shall not make decisions to invest any trust fund under a preneed contract with those individuals or entities contained in §§ 436.445(1) through (4), who are, or may be, related to that preneed contract or trust;
- (2) The trustee investment restrictions contained in §§ 436.445(1) through (4) shall not apply to those individuals or entities related to other preneed contracts or trusts.

Authority: 333.340 and 436.445

Rule re: Insurance funded contracts

Title: Insurance funded contracts

Purpose: This rule identifies payment issues in insurance funded preneed contracts.

- (1) Payments collected by or on behalf of the seller which must be promptly remitted to the insurer or the insurer's designee do not include administrative or other fees built into the preneed contract;
- (2) The purchaser of an insurance funded preneed contract, may, upon agreement with the seller and provider, submit payments directly to the insurer or insurer's designee;
- (3) For any overages under the preneed contract that exceed the costs under the contract, the overages shall be distributed:
  - a. To the estate of the beneficiary named in the insurance policy; or
  - b. If the policy holder received public assistance to the State of Missouri if the State of Missouri was named as beneficiary or to the estate of the beneficiary if the State of Missouri was not named.

Authority: 333.340 and 436.450